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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Thirty-eighth session

SUMMARY RECORDS OF THE 863rd TO 888th MEETINGS

Held at the Palais des Nations, Geneva,
from 6 to 24 August 1990

Volume I

PUBLIC MEETINGS *

Chairman: Mr. SHAHI

Rapporteur: Mr. BANTON

The list of members attending the session may be found in the report of the Committee to the General Assembly (Official Records of the General Assembly, Forty-fifth Session, Supplement No. 18 (A/45/18), paras. 6 and 7).

* The Committee also held two closed meetings, the summary records of which (CERD/C/SR.882 and CERD/C/SR.885) contained in document CERD/C/SR.863-888 (Vol. II), were issued in restricted distribution.

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ABBREVIATIONS

CERD	Committee on the Elimination of Racial Discrimination
EEC	European Economic Community
GNP	gross national product
ILO	International Labour Organisation
PLO	Palestine Liberation Organization
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	Office of the United Nations High Commissioner for Refugees

863rd meeting

Monday, 6 August 1990
at 10.55 a.m.

Temporary Chairman: Mr. MARTENSON

Chairman: Mr. SHAHI

ITEM 1 OF THE PROVISIONAL AGENDA

Opening of the session by the representative of the Secretary-General

1. The TEMPORARY CHAIRMAN, speaking on behalf of the Secretary-General, declared open the thirty-eighth session of the Committee on the Elimination of Racial Discrimination and welcomed participants.

2. He said he shared the disappointment felt by members of the Committee at the cancellation of the spring session because of the shortfall in contributions. Several States parties had still not met their obligations under article 8, paragraph 6, of the International Convention on the Elimination of All Forms of Racial Discrimination and, in some cases, the arrears went back over 10 years. At its forty-fourth session, the General Assembly had expressed its deep concern regarding the situation and had requested the Secretary-General to invite those States parties which are in arrears to pay the amounts in arrears.

3. Furthermore, in its resolution 1990/25 the Commission on Human Rights had taken an initiative, which, it was to be hoped, would ultimately make it possible to solve the problem, at least in part. It had recommended that the Secretary-General seek to obtain, at the earliest opportunity, the concurrence of States parties to the Convention to the establishment of a "contingency reserve fund" made up of that portion of State party payments, received prior to 31 December of each year, which are over-assessments for the elapsed year - normally credited against the contribution of States parties concerned. If the States parties agreed, the fund would be used to finance the Committee's spring sessions when State payments had not been received in time. Once those payments had been received, the contingency fund would be reimbursed and could continue to operate on a revolving basis.

4. The cancellation of the spring session had been particularly regrettable because it had prevented the Committee from carrying out its planned review of its 20 years of activities in the field of human rights. The Committee was the first treaty body to have been established in the human rights field and, for that reason, its experience was unique. By championing the equality and solidarity of peoples and races, it had helped to redraw the frontiers of international law and to protect human rights; the Committee could take credit for the positive developments which had recently taken place in southern Africa, a region which had long been the citadel of racial discrimination. Symbolically, Namibia had finally acceded to independence on 21 March 1990, the International Day For the Elimination of Racial Discrimination.

5. Racial discrimination and apartheid had not thereby been fully eradicated in South Africa, any more than in many other parts of the world. The international community should therefore remain vigilant and not relax its

efforts; in particular it should take effective steps to implement the Programme of Action for the Second Decade to Combat Racism and Racial Discrimination. 1/

6. In 1990, which marked the twentieth anniversary of the Committee, two new States - Bahrain and St. Lucia - had acceded to the Convention, bringing the total number of States parties to 129. Furthermore, two new States parties - Algeria and Hungary - had made the declaration under article 14 of the Convention, thereby recognizing the competence of the Committee to receive and consider communications from individuals or groups of individuals. That was a welcome development, since individual recourse was the best defence against the violation of human rights.

7. In recent years the Centre for Human Rights had significantly expanded its advisory services and technical assistance programme, being aware that strong national infrastructures were a major safeguard against violations of human rights and fundamental freedoms and that the establishment or strengthening of national institutions must go hand in hand with the improvement of international mechanisms. The Centre for Human Rights had, inter alia, organized two training courses, at Lima and at Buenos Aires, in October 1989, a training course on international norms and standards in the field of human rights in Moscow in November-December 1989, a regional workshop on the same subject at Manila in May 1990, a workshop on the practice and procedures of the Human Rights Committee in relation to complaints under the Optional Protocol to the International Covenant on Civil and Political Rights at Ottawa in June 1990 and two training courses on the implementation of human rights and the administration of justice at Montevideo and at Asunción in July 1990. A European workshop was due to be held at Kiev in September 1990, to be followed, in October, by a workshop at Lisbon and an international seminar on the factors contributing to racism, to be organized at Geneva. Finally, an African seminar on the administration of justice and human rights was due to be held at Cairo. In organizing those activities, which highlighted racism, the Centre's main aim was to mobilize international public opinion, which could and should become a powerful instrument in the campaign for the realization of human rights.

8. At their second meeting held at Geneva from 10 to 14 October 1988, the persons chairing the human rights treaty bodies had recommended that the Secretary-General appoint a task force to explore the costs and benefits of computerizing, as far as possible, the work of the committees concerned, as well as an expert to prepare a study on possible long-term approaches. 2/ The General Assembly in its resolution 44/135 had referred the study to the Commission on Human Rights before it took the matter up again itself at its forthcoming session and, in its resolution 1990/25, the Commission had invited the treaty bodies to review the study, to consider which conclusions and recommendations were of relevance to their respective spheres of competence, and to send their comments to the Secretary-General. The text of the study would be distributed to the members of the Committee, who would review it during the current session.

9. Where the work of the task force on computerization was concerned, the Committee might wish to know that the Commission on Human Rights and the Economic and Social Council had recommended that the recurrent costs involved

in operating the system should be included in the United Nations budget for the 1992-1993 biennium. The installation of the system would depend, however, on the receipt of voluntary contributions from Member States.

10. Lastly, after informing the Committee that the third meeting of chairpersons of human rights treaty bodies would be held at Geneva from 1 to 5 October 1990, he urged the Committee to spare no effort to promote respect for fundamental freedoms and rights, as well as for the principles set forth in the Charter of the United Nations, in a world in which substantial progress had been made but in which serious dangers still existed.

ITEM 2 OF THE PROVISIONAL AGENDA

Solemn declaration by the newly elected members of the Committee under rule 14 of the rules of procedure

At the invitation of the Temporary Chairman, Mr. Aboul-Nasr, Mr. Banton, Mr. de Gouttes, Mr. Lamptey, Mr. Lechuga Hevia, Mr. Shahi and Mr. Wolfrum made a solemn declaration in accordance with rule 14 of the Committee's rules of procedure.

ITEM 3 OF THE PROVISIONAL AGENDA

Election of officers

11. Mr. LAMPTEY nominated Mr. Shahi for the office of Chairman.

Mr. Shahi was elected Chairman by acclamation and took the Chair.

12. Mr. ABOUL-NASR nominated Mr. Lamptey for the office of Vice-Chairman.

13. Mr. YUTZIS nominated Mr. Ferrero Costa for the office of Vice-Chairman.

14. Mr. RESHETOV nominated Mr. Vidas for the office of Vice-Chairman.

Mr. Lamptey, Mr. Ferrero Costa and Mr. Vidas were elected Vice-Chairmen by acclamation.

15. Mrs. SADIQ ALI nominated Mr. Banton for the office of Rapporteur.

16. Mr. RESHETOV and Mr. ABOUL-NASR seconded the nomination.

Mr. Banton was elected Rapporteur by acclamation.

ITEM 4 OF THE PROVISIONAL AGENDA

Adoption of the agenda

17. Mr. YUTZIS said that, in view of the great amount of work before it, the Committee must get into its stride immediately and adopt a sustained rhythm of work in order not to have to force the pace at the end of the session. The organization of work was therefore of vital importance. In that connection, it might be very useful to set up working groups to deal with certain issues

at the start. With regard to the timetable proposed for the consideration of reports by States parties, it would be advisable to ensure that the same specially appointed rapporteur did not have to comment on two reports in succession. Further information was needed on the list of reports to be considered.

18. Mr. ABOUL-NASR proposed that the Committee should first adopt its agenda and come back to the organization of work at the next meeting, after the Bureau had met.

19. The CHAIRMAN said that, in the absence of any objection, he would take it that the Committee decided to adopt the provisional agenda.

The agenda was adopted.

20. Mr. HOUSHMAND (Representative of the Secretary-General) informed the Committee that, since the preparation of the provisional timetable in document CERD/C/198, some States parties had requested that the consideration of their reports should be postponed until the Committee's thirty-ninth session. The States concerned were Barbados, Canada, the United Kingdom, Yemen and the Ukrainian Soviet Socialist Republic. The Bureau, which would be meeting after the present meeting, would consider a new draft timetable.

21. Mr. YUTZIS suggested that instead of those reports, the Committee could study others which had not originally been due to be considered. That would enable it to make up some of the time it had lost.

22. Mr. FERRERO COSTA supported that suggestion.

23. The CHAIRMAN said that the matter would be considered by the Bureau, which would take account of the comments made by members of the Committee.

The meeting rose at 12.05 p.m.

Notes

1/ Report of the Second World Conference to Combat Racism and Racial Discrimination, Geneva, 1-12 August 1983 (United Nations publication, Sales No. E.83.XIV.4 and corrigendum), chap. II.

2/ See A/44/98, paras. 82 and 84.

864th meeting

Tuesday, 7 August 1990
at 10.15 a.m.

Chairman: Mr. SHAHI

AGENDA ITEM 7

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention

Sixth, seventh and eighth periodic reports of Jordan (CERD/C/130/Add.3 and CERD/C/183/Add.1)

At the invitation of the Chairman, Mr. Matalgah and Mr. Nadif (Jordan) took seats at the Committee table.

1. Mr. MATALGAH (Jordan) assured the Committee of the Jordanian Government's full support. In the first part of its eighth periodic report entitled "General information", his Government had not overlooked the question of minorities and had referred in particular to the nomadic desert peoples and to a number of measures taken for their benefit (CERD/C/183/Add.1, paras. 17-19). The report also showed that the Government was sparing no effort to stimulate the national economy and speed up social development, which it had made one of its main objectives.

2. With regard to article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination, the eighth periodic report quoted article 6 of the Jordanian Constitution, which stipulated that Jordanians were equal before the law and that there should be no discrimination among them, in regard to their rights and obligations, on grounds of race, language or religion, and article 101 of the Constitution, which provided that courts were accessible to all citizens. In addition, both Act No. 22 of 1986 concerning legislative elections and Act No. 61 of 1986 concerning civil status helped to combat discrimination against women (ibid., para. 35).

3. Referring to article 3 of the Convention, he said that his Government had always condemned apartheid and maintained no relations with the racist South African regime. It had also upheld Namibian self-determination and welcomed Namibia's accession to independence (ibid., para. 36).

4. In connection with article 4, the eighth periodic report clearly demonstrated the active role played by the various national information services in combating all forms of racial discrimination. In respect of article 5, it dealt in detail with the protection of human rights in Jordan (right to equal treatment before the courts, political rights, freedom of movement, right to nationality, right to choice of spouse, freedom of thought, conscience and religion, freedom of peaceful assembly and association, right to work and to just remuneration - with particular reference to non-discrimination against immigrant workers, right to housing, etc.).

5. In conformity with article 6 of the Convention, racial discrimination was punishable under the Jordanian Penal Code, although in fact the courts had not handed down any judgements in that regard, since there was no record of such offences in Jordan.

6. In accordance with article 7 of the Covention, his Government had taken numerous measures to combat discrimination in the field of culture and education.

7. In conclusion, he deplored the fact that Jordanian society, which was free from any form of distinction among races, was faced with the sad spectacle of racial discrimination on the other side of its borders, in the territories occupied by Israel.

8. Mr. SONG Shuhua, speaking as Rapporteur appointed for the preliminary examination of the sixth, seventh and eighth periodic reports of Jordan, said he was gratified to note that the reports had been prepared in conformity with the Committee's guidelines and contained much interesting information and comment, especially on the implementation of article 5 of the Convention. When its fifth periodic report had been considered, Jordan had been asked to provide further information on trade unions and also on the country's demographic composition; 1/ it could be seen that the Government had taken those queries into account when preparing its seventh and eighth periodic reports.

9. On the subject of workers' rights (CERD/C/130/Add.3, paras. 31-33), he would like to know the percentage of the working population in relation to the population as a whole. In the eighth periodic report (CERD/C/183/Add.1, para. 51) it was stated that persons applying for naturalization must not compete with Jordanians in business. What exactly was meant by "compete with", and did that not mean that foreigners were at a disadvantage in business? In connection with the sixth periodic report (CERD/C/130/Add.3, para. 27), what restrictions did the law impose on freedom of opinion and expression?

10. Both the eighth periodic report (para. 43) and the sixth (para. 10) referred to women's right to vote and to stand for election to the House of Representatives. What was the percentage of women representatives? The fifth periodic report had referred to preparations for a reform of the Jordanian administrative system. As there was no mention of such a reform in the periodic reports being considered at the current session, it would be interesting to hear further details on the subject.

11. The eighth periodic report (CERD/C/183/Add.1, paras. 17-19) reported the measures taken by the Jordanian authorities in support of the desert population, but there was no mention of the results of those efforts, about which it would be interesting to hear more. It would also be useful to have information on the differences between the desert and non-desert areas of the country and on the school enrolment rate among the nomadic peoples. In China, his own country, school attendance by children of nomads posed a difficult problem. Lastly, in connection with article 7 of the Convention, he would like to know whether the Convention and other international legal instruments on human rights were translated into Arabic and disseminated in that language.

12. Mr. VIDAS said he understood from the eighth periodic report paras. 43-46) that the draft Act referred to in paragraph 9 of the sixth periodic report (CERD/C/130/Add.3) had been adopted, but he would like to have confirmation.

13. Mr. WOLFRUM requested clarification concerning the procedures guaranteeing minorities the right to take part in the work of Parliament (CERD/C/183/Add.1, para. 10). He, too, would welcome details of the requirement that persons applying for naturalization must not compete with Jordanians in business (ibid., para. 51). Act No. 22 of 1986 (ibid., para. 44), stipulated that candidates for election to the House of Representatives must have held Jordanian citizenship for at least 10 years. As the period had been only five years under previous legislation, it would be interesting to know why it had been ex ended. Did the new provision not have the effect of preventing immigrants from taking part in Jordanian political life?

14. Mrs. SADIQ ALI said that she would like to know what percentage of the Jordanian population of Palestinian origin lived outside the 10 camps that had been set up and what was the status of those refugees, who represented a substantial proportion of the total population. Since the severance of ties with the West Bank had led to the dissolution of Parliament, when and in what form would the new Lower House of Parliament be constituted, and did that mean that the law in force would need to be amended? Lastly, was Jordan a signatory of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 39/46)?

15. Mr. de GOUTTES said that he, too, would welcome clarification of paragraph 51 of document CERD/C/183/Add.1. On another point, he wondered how the Jordanian Government ensured compatibility between the preference given to Arabs over foreign workers in employment (ibid., para. 80) and article 5 (e) (i) of the Convention. With regard to the "unlawful organizations" (ibid., para. 44), he asked the representatives of the Jordanian Government to give examples. Might there be a connection between those unlawful organizations and certain Palestinian organizations?

16. Mr. LECHUGA HEVIA said he wished to know what was meant by the group of "persons from the Jordan Valley area the colour of whose skin is affected by its hot climate" (CERD/C/130/Add.3, para. 40). He expressed surprise at that designation.

17. Mr. FOICHEL referred to paragraph 13 of the eighth periodic report (CERD/C/183/Add.1) and asked the representatives of Jordan whether Palestinian refugees were also free to settle in any part of Jordan and enjoyed freedom of movement outside the camps.

18. Mr. GARVALOV said that the Jordanian Constitution did seem to guarantee enjoyment of all human rights but that that did not necessarily mean that those rights were observed in practice. In that connection, he would like to know whether specific laws, based on the Constitution, had been passed to prohibit racial discrimination in Jordan. He also asked the representatives of Jordan whether it was possible in their country to form political parties on grounds of racial difference and whether all Palestinians could obtain a

Jordanian passport. The eighth periodic report (CERD/C/183/Add.1, para. 15) reported that on 31 July 1988 Jordan had announced its decision to sever its legal and administrative links with the West Bank. In what way was that decision relevant to the struggle against racial discrimination? He wished to know whether minorities in Jordan could issue publications, and requested further information on membership of "unlawful organizations" (ibid., para. 44), which precluded election to the Jordanian Parliament. On the subject of freedom of thought, conscience and religion, he asked whether there was any specific legislation concerning the prevention of racial discrimination.

19. Mr. ABOUL-NASR congratulated Jordan on the quality of document CERD/C/183/Add.1. He in turn referred to paragraph 80 of the document and to Labour Act No. 28, which provided that precedence should be given to Arab workers over foreigners. The preference given to Arab workers derived from an agreement concluded between members of the League of Arab States. The different treatment of Arab and other workers was not, therefore, based on racial difference but on whether or not the worker belonged to a country that was a member of the League. In that sense the clause was not incompatible with the Convention. He pointed out that in every country the status and situation of a foreigner wishing to settle there were checked.

20. Mr. YUTZIS referred to paragraph 60 of document CERD/C/183/Add.1 and to the provisions of the Jordanian Constitution, which stipulated that Islam was the religion of the State and that the State must ensure the free exercise of religious worship and belief in accordance with the customs observed in the Kingdom, provided that that was not prejudicial to public order or incompatible with morality. He would like to know who in fact defined such moral criteria. If there was a State religion, as was the case in Jordan, it was no doubt that religion which served as a moral reference. He asked the representatives of Jordan whether other ethnic communities, with other religious values, might also have a say in defining the concept of morality. That article of the Jordanian Constitution was rather too unspecific and did not make it clear in what cases a form of religious worship would be incompatible with public order or morality. He would like to know whether there was a code specifying what constituted a transgression of morality.

21. Mr. ABOUL-NASR endorsed Mr. Yutzis' comments. No one could stand in moral judgement when it came to the various religious practices. That point was not, however, directly relevant to implementation of the Convention. Replying to the Chairman's observation that such questions were more a matter for private discussion among members of the Committee, he said that exchanges of views within the Committee were entirely in keeping with the spirit of the Convention and led directly to relevant questions to be asked of the delegation of the State party concerned.

22. The CHAIRMAN requested the representatives of Jordan to reply to the questions asked by members of the Committee. It would be for them to decide whether they also wished to inform the Committee of events that had occurred in Jordan since the preparation of the State party's lastest report.

23. Mr. MATALGAH (Jordan) thanked the members of the Committee for the interest they had shown in his country's reports. The questions to which he

could not reply at the current session would be dealt with in subsequent reports submitted by Jordan. No precise statistics on employment in Jordan were immediately available, and that question would be covered in detail in his country's next report. On another point, he stressed the fact that in Jordan citizens were free to use all available means of expression, within the limits of the law. Free elections had been held in 1989, and additional freedoms had subsequently been accorded to the press. With regard to the situation of Palestinians in Jordan, they enjoyed the same rights as Jordanian citizens, Palestinian and Jordanian citizens being absolutely equal before the law.

24. Palestinians enjoyed freedom of movement throughout the country and were free to settle in the region of their choice. On the subject of the severance of legal ties with the West Bank, he reminded the Committee that his Government had taken that decision in accordance with the wishes of the Palestine Liberation Organization, in order to enable the Palestinian people to found an independent State. The decision in no way affected Jordanian citizens of Palestinian origin living in Jordan, who retained all the rights pertaining to Jordanian nationality.

25. In reply to the questions about the right to work and the precedence given to Arab workers over foreign workers, he pointed out that the Labour Code in force in his country drew no distinction between Jordanian and foreign workers. However, some laws gave priority to Arab workers in accordance with provisions adopted by Jordan within the framework of the League of Arab States. That being said, a foreign worker who had obtained a permit to work in Jordan enjoyed the same rights as a worker of Jordanian nationality.

26. With regard to article 4 of the Convention, he reminded the Committee that article 130 of the Penal Code of 1960 provided that any person who, in time of war or peace, engaged in propaganda aimed at inciting others to racial or religious intolerance was punished by the law. Similarly, any act that gave rise to religious or racial bigotry was punishable under article 150 of the Code. Article 151 of the Code provided that any person who joined an association established for the purposes mentioned in article 150 was liable to the same penalty. The same article stipulated that in all such cases the association should be dissolved and its assets confiscated. Referring to the question asked about seats reserved for minorities in the House of Representatives, he said that the two latest Electoral Acts stipulated that seats in that House would be reserved for minorities. For example, the governorate of Amman and the city of Amman itself had six Muslim representatives, including one Circassian or Chechen, and one Christian representative. The Governorate of Irbid also had a Christian representative. As a rule, most governorates in Jordan had seats reserved for minorities.

27. One member of the Committee had observed that, under Jordanian electoral law, persons belonging to unlawful parties or organizations could not stand for election to the House of Representatives. The situation was being looked into by the Government and a commission had been set up to draw up a charter concerning the establishment of political parties. On the subject of unlawful

organizations, he said that a number of decrees and legislative instruments had been adopted recently, and that the law prohibiting communism had been repealed.

28. One member of the Committee had asked whether the reference to the colour of a person's skin in Jordan's sixth periodic report (CERD/C/130/Add.3, para. 40) had any discriminatory implications. That was by no means the case. As to whether it was possible to form political parties in Jordan on ethnic or religious grounds, he was unable to give any precise information on the subject. To his knowledge, there were no such parties in his country, nor had there ever been any; in his view, to authorize them would amount to practising a form of discrimination.

29. The CHAIRMAN said that the Committee had thus concluded its consideration of the sixth, seventh and eighth periodic reports of Jordan (CERD/C/130/Add.3 and CERD/C/183/Add.1).

Mr. Matalgah (Jordan) withdrew.

AGENDA ITEM 2

Solemn declaration by the newly elected members of the Committee under rule 14 of the rules of procedure (continued)

At the invitation of the Chairman, Mr. Sherifis, who had been absent from the previous meeting, made the solemn declaration provided for under rule 14 of the Committee's rules of procedure.

AGENDA ITEM 7

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Eighth and ninth periodic reports of Denmark (CERD/C/158/Add.8 and CERD/C/184/Add.2)

At the invitation of the Chairman, Mr. Kofod and Mr. Hagel-Sørensen (Denmark) took seats at the Committee table.

30. Mr. KOFOD (Denmark) said that the ninth periodic report of his country, prepared in 1989, was simply an update of the eighth. The information provided was still applicable, with the exception of some population figures, and there were no significant changes to report.

31. Denmark remained vehemently opposed to apartheid; it still applied the sanctions agreed upon in various forums and would continue to do so until there was clear evidence of profound and irreversible change in South Africa. Denmark had lifted all sanctions against Namibia when that country had gained its independence.

32. There were numerous minorities in Denmark, and the Government was fully aware of the need to uphold the principle of equality before the law and to prevent any act or utterance that went against that principle and against the

deeply-rooted feeling among Danish people that all human beings were equal. Unfortunately, as could be seen from the Danish reports, there had been acts and statements of a racially discriminatory nature. Legal action had, however, been taken against the offenders and would similarly be taken should any further case arise.

33. The CHAIRMAN invited Mr. Ferrero Costa, the Rapporteur appointed for the preliminary examination of the reports, to take the floor.

34. Mr. FERRERO COSTA praised the efforts made by Denmark to ensure respect for human rights in its territory and to combat racial discrimination. In that country, as in others, however, that form of discrimination persisted.

35. The number of immigrants in Denmark had increased from 116,949 (about 2.3 per cent of the total population) on 1 January 1986 to 142,016 (2.8 per cent of the population) on 1 January 1989. He would like to know what specific measures had been taken by the Danish Government since 1985 (the year of the seventh periodic report) 2/ to prevent racial discrimination against immigrants and refugees, pursuant to article 2 (1) (c) of the Convention.

36. He also noted that on 1 January 1989 the total population of Greenland had been 55,171, of whom 45,629 - i.e. 83 per cent - had been born in Greenland. However, on 31 December 1987, of the 6,472 persons employed full time in the Greenland civil service, only 4,139 had been born in that country - i.e. 64 per cent of the total. He would like to know the reason for the apparent preference given to persons from outside and what measures had been taken by the Danish Government since 1985 to combat racial discrimination in Greenland.

37. In connection with article 3 of the Convention, he said that Denmark had commendably taken significant measures against South Africa. In particular, it had adopted, in June 1985, Act No. 243 prohibiting any further Danish investments in South Africa and, in June 1986, Act No. 289 prohibiting trade in goods and services with that country. Annex I to the eighth periodic report (CERD/C/158/Add.8) stated, however, that the general ban laid down in Act No. 243 did not apply to investments "made with a view to continuing previous investments in business activities in South Africa and maintaining commercially sound operation of the business". He would like to know whether that exemption had been applied in practice, what was the total amount of Danish investments in South Africa in 1990 and exactly how many Danish companies were involved in business in that country. He also wished to be informed of the results of the study conducted by the Ministry of Industry on the extent of Danish investment in South Africa.

38. According to annex II to the eighth periodic report, dispensation from the provision of the Act prohibiting trade with South Africa might be granted for a period of two years. He would like to know whether any such case had arisen since 1986 and whether the Act prohibited not only the transport of mineral oil but also shipments of all kinds by vessels sailing under the Danish flag. He also asked whether it was true that the Danish Government had recently decided to establish diplomatic relations with the racist regime in South Africa and, if so, for what reasons.

39. With regard to articles 4 and 6 of the Convention, the eighth periodic report stated that the Danish courts had heard two cases involving infringements of section 266 (b) of the Criminal Code and two cases concerning violation of the Act of 9 June 1971 prohibiting racial discrimination. The accused had all been refugees. The ninth periodic report (CERD/C/184/Add.2, para. 11) also described a case involving infringement of section 266 (b) of the Criminal Code by "green jackets" who had not received any separate punishment since they had recently been sentenced to lengthy prison terms. He requested further information on the subject and wished to know who exactly the "green jackets" were, why they had not received a new sentence and what specific measures were being taken by the Danish Government to punish incitement to racial discrimination.

40. He quoted a number of passages from the Committee's report on its thirty-third session at which it had examined Denmark's seventh periodic report. Some members had expressed surprise "that only two court cases involving racial discrimination had been reported, particularly in view of the present tide of xenophobia affecting the industrialized countries of Europe primarily as a result of increased unemployment ... They wished to know whether the reduced incidence of racial discrimination in Denmark at a time of rising xenophobia was due to the fact that immigrants, particularly newcomers, were poorly informed about the possibilities that existed for seeking redress, or that the preventive measures taken by the Government were successful, or that the problem was not adequately monitored". 3/ The representative of Denmark had replied that "there were probably so few recorded cases of racial discrimination in Denmark because strong nationalism had never been a prevailing force, and the Danes were a pragmatic people who did not openly discriminate". 4/ He, the speaker, wished to know whether there had really been no other cases of discrimination, whether effective remedies were available to persons who considered that their fundamental rights had been violated and whether those remedies provided for swift redress.

41. It was reported in the ninth periodic report that, in the period under consideration, the Parliamentary Ombudsman had undertaken an investigation into a case of presumed racial discrimination, in which a local council had recommended to building societies that they should refrain until further notice from letting houses or flats to immigrants. The case had subsequently been examined by the Folketing (Parliament), and he would like to know what the outcome had been.

42. With regard to article 5 of the Convention, the eighth and ninth periodic reports gave no information about the measures taken by Denmark since 1986 to guarantee the right of everyone to equality before the law. Quoting article 5, he requested details of the measures taken by the Danish Government to guarantee to everyone, without racial discrimination, the right to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, and to just and favourable remuneration.

43. Lastly, on the subject of article 7 of the Convention, it was most encouraging to see that the Danish sports organizations had been entrusted with the establishment of a research fund to promote the participation of refugees and immigrant workers in the work of sports associations. Another

welcome development was the decision taken by the Danish Parliament to adopt an appropriation of $1,250,000 for an information and education campaign among Danes involved with refugees and immigrants. The purpose of the campaign was to foster among Danes understanding, tolerance and frankness towards foreigners living in their country, and consequently to dispel prejudice and reduce racial discrimination.

44. The CHAIRMAN thanked Mr. Ferrero Costa for his thorough analysis of the eighth and ninth reports of Denmark and gave the floor to Mr. Banton.

45. Mr. BANTON said he wondered whether Denmark had been as consistent in implementing the Convention as its reports would suggest. For instance, on the subject of the young people known as "green jackets" who claimed to share the views of the Ku Klux Klan, he wished to know whether it was true that the police had not arrested them on the grounds that their actions were merely "boyish tricks". In the ninth report (see CERD/C/184/Add.2, para. 11), it was stated that two journalists, had been sentenced for having permitted three "green jackets" to make derogatory remarks about other races in the course of a television broadcast and that no punishment had been meted out to the "green jackets", who had recently been sentenced to lengthy prison terms. Had the young people been sentenced for their statements on television or for other reasons?

46. In the same paragraph 11, reference was made to two persons who had been sentenced for having burned a wooden cross outside a church in which a group of Tamil refugees had sought shelter. In that case, had proceedings been initiated on grounds of evidence given to the police by the journalist or on the initiative of the police?

47. The conviction of the two journalists had been upheld by both the High Court and the Supreme Court. It would be helpful to know the Supreme Court's interpretation of section 266 (b) of the Criminal Code. States parties were requested to provide the texts of relevant judicial decisions.

48. The Danish Parliament had adopted section 266 (b) of the Criminal Code to meet the requirements of article 4 of the Convention. There had been some argument in the Supreme Court about the translation of the word "dissemination". The question had also arisen of striking a balance between obligations under article 4 of the Convention and those laid down in article 19 of the International Covenant on Civil and Political Rights, but it appeared that the Court's attention had not been drawn to the Committee's discussion of those difficulties. 5/ He asked whether, in its interpretation of section 266 (b) of the Criminal Code and article 4 (a) of the Convention, the Court had not stressed the objective fact of dissemination and excluded consideration of intent.

49. In a municipality near Copenhagen, where immigrant workers constituted 10 per cent of the population, the local council had, in 1976, recommended that building societies should refrain until further notice from letting dwellings to immigrants so as not to arouse hositility among the native population (see CERD/C/184/Add.2, para. 11). The local council had justified its decision by reference to article 1 (4) of the Convention and stated that its purpose was to protect migrant workers, thus emphasizing the subjective

criterion of intent without demonstrating that the other conditions of article 1 (4) had been met. It had received the support of the Public Prosecutor and the Ombudsman. It was stated in the report that Parliament had subsequently intervened, but no information on that intervention was given in the report.

50. It was surprising that, after stating on two occasions that an ethnic quota scheme for housing allocations was unlawful and contrary to the Convention, the Housing Department had recently declared that it was possible in specific cases to take an applicant's nationality into consideration. There seemed to be some inconsistency between the Danish judicial system's very strict interpretation of article 4 (b) of the Convention, excluding the subjective element, and its excessively lax interpretation of article 1 (4), emphasizing subjective considerations.

51. He also asked how Denmark protected the right to work free from racial discrimination and why Denmark, to his knowledge, had not yet fulfilled its obligation under article 6 of the Convention to provide effective protection and remedies for persons who suffered discrimination when applying for jobs.

52. He hoped that the authorities in Denmark, one of the few countries to have made the declaration provided for in article 14, paragraph 1, of the Convention, had taken note of the opinion expressed by the Committee in the dispute between Mrs. Yilmaz-Dogan and the Government of the Netherlands, and that they would see to it that no such case came before the Committee from Denmark. The issue in question, which was trivial compared with those that had given rise to the Convention, might have been resolved through a settlement between the employer and Mrs. Yilmaz-Dogan. He would be grateful if the Danish Government, in its tenth report, would give the Committee its opinion on the issues raised by the case, as well as information on measures taken to ensure protection of the right to work.

53. The Committee might one day make recommendations to States parties on the various methods of ensuring respect for the right to work. For the time being, there seemed to be three main ways in which States could meet their obligations under articles 5 (e) (i) and 6 concerning protection of that right. The first method was to rely on a criminal sanction, but it was very difficult in cases of that kind to prove beyond doubt that discrimination had occurred. The second method was to have recourse to civil law, which afforded simpler procedures for ruling on that kind of case, although it was important that the parties could reach a private settlement rather than taking legal action. The third possibility was to rely on the Labour Code. Such an approach might be effective in protecting against unfair dismissal or discrimination in promotion, but was probably ineffective when it came to recruitment. On all those issues, the Committee would like a detailed statement of Denmark's views.

54. In reply to a question, Mr. Kofod, the representative of Denmark, had said that there were minorities in his country. On the subject of minorities, it was essential to distinguish between immigrant minorities and territorial minorities. The latter were groups of people who had lived in a particular place for generations and had to come to terms with changes in national boundaries. They had rights which were recognized in treaties and

international instruments. His reading of article 27 of the International Covenant on Civil and Political Rights was that it was concerned with territorial minorities and not immigrant minorities. The word "minorities" should therefore be used with extreme caution.

55. In conclusion, he paid tribute to Denmark for hosting for many years the International Working Group on Indigenous Affairs, which assisted the Committee in its work.

56. Mr. LECHUGA HEVIA noted that, according to paragraph 6 of the ninth report of Denmark (CERD/C/184/Add.2), the Danish Government considered that the five companies to which the Code of Conduct of the European Economic Community applied observed the guidelines laid down in the Code. He asked how the Danish Government assured itself that that was indeed the case.

57. He further noted that Act No. 243 prohibiting new Danish investment in South Africa and referred to in annex I of the eighth report (CERD/C/158/Add.8) did not apply to investments made with a view to maintaining commercially sound operation of the enterprises concerned (a total of five). That dispensation did not dissuade those enterprises from remaining in South Africa and consequently contributed to the maintenance of apartheid, even though Denmark was opposed to that system. Was the Danish Government considering a total ban on investment in South Africa?

58. Mr. de GOUTTES said that he had read Denmark's eighth and ninth reports with great interest (CERD/C/158/Add.8 and CERD/C/184/Add.2); that country's conduct in regard to respect for human rights was exemplary. He asked whether the increase in the number of foreigners had prompted reactions of intolerance or discrimination in schools. He also sought additional information on the "green jackets", on the Immigrants Council, acting as an advisory council to the Government on immigration policy, and on the decision of the Supreme Court to sentence a journalist for giving precedence to freedom of expression over protection against racial discrimination.

59. Mr. RHENAN SEGURA thanked the Danish delegation for the dialogue it had established with the Committee, and asked whether the citizens of Greenland had or would have the right to hold a European Economic Community passport, which in principle was reserved for persons born on the territory of the Community. If that were not the case, it would be a discriminatory measure.

60. Mr. WOLFRUM thanked the delegation of Denmark for introducing the country's eighth and ninth reports (CERD/C/158/Add.8 and CERD/C/184/Add.2). Like Mr. Ferrero Costa, he was surprised that there was no provision in Danish legislation stipulating that the Government undertook to ensure that the public authorities should engage in no act or practice of racial discrimination, in conformity with article 2 (1) (a) of the Convention.

61. He asked whether the Public Prosecutor's decision to refuse to prosecute the local council of a municipality on the outskirts of Copenhagen - which had recommended to local building societies that they should refrain from letting houses and flats to immigrants - for breaking the laws against racial discrimination was an exceptional case or whether it reflected the Government's general attitude.

62. It was apparent from the tables in the eighth report (CERD/C/158/Add.8, para. 13) and the ninth report (CERD/C/184/Add.2, para. 4) that citizens of Greenland born in that country had relatively low incomes. Had the Danish Government done anything to reverse that trend? He reminded the Committee that the Report of the Second World Conference to Combat Racism and Racial Discrimination had stressed that in some cases it might be necessary - and was not discriminatory - to take measures to benefit persons belonging to particularly disadvantaged minority groups. 6/ It appeared from the aforementioned tables that that provision had not been observed in the case of Greenland.

63. He did not agree with Mr. Banton's interpretation of article 27 of the International Covenant on Civil and Political Rights. It was not for the Committee to give an opinion on the scope of that article. He believed that if new minorities emerged as a result of immigration, they should enjoy the protection provided for in that article.

64. He was surprised that in the "green jackets" case, journalists and not the "green jackets" themselves had been sentenced. Article 4 of the Convention could not be invoked to assert that protection against racial discrimination took precedence over freedom of opinion. It emerged from that article that it was for the State and not the Committee to determine whether respect for freedom of opinion and freedom of information, so important to journalists, should take precedence over the prohibition of incitement to racial discrimination. He would welcome more detailed information on the reasons that had prompted the court to find the journalist guilty and not the "green jackets".

The meeting rose at 1.05 p.m.

Notes

1/ CERD/C/105/Add.3 and 6; see also 685th meeting.

2/ CERC/C/131/Add.6.

3/ See Official Records of the General Assembly, Forty-second Session, Supplement No. 18 (A/42/18), para. 252.

4/ Ibid., para. 266.

5/ Ibid., para. 318.

6/ United Nations publication, Sales No. E.83.XIV.4 and corrigendum, chap. II, paragraph 21 of the Declaration.

865th meeting

Tuesday, 7 August 1990
at 3.05 p.m.

Chairman: Mr. SHAHI

AGENDA ITEM 7

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Eighth and ninth periodic reports of Denmark (CERD/C/158/Add.8 and CERD/C/184/Add.2) (concluded)

At the invitation of the Chairman, Mr. Kofod and Mr. Hagel-Sørensen (Denmark) took places at the Committee table.

1. Mr. RESHETOV said that Denmark's long-standing democratic tradition was reflected in its decisions on national as well as international issues, as evidenced by its exemplary handling of problems in its relations with Iceland. He had himself had first-hand experience of the democratic situation prevailing in Denmark at the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe, held in Copenhagen from 5 to 29 June 1990. Denmark had played an important part in the adoption by that meeting of a document 1/ of historic importance in the pan-European movement, which included a chapter on national minorities. Countries with such a tradition were expected to live up to their reputation.

2. On the subject of national minorities and with reference to Mr. Banton's discussion with Mr. Wolfrum at the previous meeting, he said that in Denmark, in addition to recent immigrants, there were basically three national minorities, Greenlanders, Faeroe Islanders and the German-speaking minority. He wished to know to what extent the exercise of certain rights was guaranteed for each of those minorities. Firstly, did members of the minorities have the right to learn their own language and to be taught in that language? Secondly, could a minority language be used in public institutions, such as courts of law? Thirdly, how was the right to cultural, economic and State autonomy exercised by the three national minorities? The right of a people to self-determination might take a variety of forms, including the right to form an independent State. As a purely hypothetical question, he wished to know to what extent it would be possible for national minorities in Denmark to enjoy such a right, should, of course, they wish to do so.

3. Turning to the eighth periodic report (CERD/C/158/Add.8), he commended the provision, referred to in paragraph 7, that immigrants resident in Denmark for three years had the right to vote in local government elections. He requested further information on paragraph 15, since the statement that 3,858 of the 6,168 persons employed in the Greenland civil service were "born in Greenland" left some doubt as to whether authentic Greenlanders were actually running their own affairs. With reference to paragraphs 33 and 35, from which it emerged that those guilty of incitement to racial hatred were fined or cautioned, he said that Denmark's position lay somewhere between that of countries in which there was no punishment for verbal incitement and that of other countries, like his own (the Soviet Union), where, under article 104 of

the Criminal Code, severe penalties, including several years' imprisonment, could be applied. He cited a trial currently in progress in Moscow concerning anti-semitism and said he hoped that the guilty parties would receive due punishment.

4. Mr. VIDAS thanked the Government of Denmark for its efforts to eliminate racial discrimination, including its contribution to the fight against apartheid through its attitude to the South African regime.

5. He associated himself with the very relevant questions raised by previous speakers, in particular those raised by Mr. de Gouttes (864th meeting), and hoped that a response would be forthcoming.

6. He requested information about the effects of the two new Acts passed by the Danish Parliament in 1985 and 1986 prohibiting new Danish investments in South Africa and trade with that country.

7. Mr. ABOUL-NASR agreed with previous speakers that the sentences handed down for racially offensive statements in the "green jackets" case represented a welcome development, although, like Mr. Wolfrum (864th meeting), he would have preferred sentences also to have been imposed on those who had allowed such statements to be made.

8. He wished to know, however, what yardstick was used in Denmark to establish the borderline between freedom of expression and offensive or discriminatory utterances and acts, since the book, The Satanic Verses, which was well known to be insulting and blasphemous, had been published in Denmark. There was an inherent contradiction in the fact that in the "green jackets" case the Convention had been applied and the right to freedom of expression overruled, whereas in the case of The Satanic Verses, which insulted Islam and the Muslim people, freedom of opinion had been invoked as the overriding consideration. While freedom of expression was an important principle, prejudice to others placed limitations on such freedom.

9. Mr. JAMPTEY said that, while he agreed with Mr. Banton's comments (864th meeting), it would be extremely helpful to the Committee's work if, especially in matters such as the "green jackets" case, reporting countries provided the texts of court decisions in their reports. In his view, it would be incorrect, in the case in question, to place a restrictive interpretation on the court ruling, which, in stating that freedom of expression should not take precedence over protection against racial discrimination, made it quite clear that, with due regard to the freedom of speech clause in article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, there were limitations to freedom of speech in certain circumstances. It was the most unambiguous court decision that the Committee had ever been given to consider in regard to the interpretation of that clause, on which the Committee had had frequent discussions. It reflected the near unanimity in the Committee regarding the meaning and intention of the provision. It would therefore be extremely helpful to the Committee if the representatives of the Government concerned could furnish the full text of the judgement either at the current session or in its next report.

10. Mr. FOIGHEL said that he associated himself closely with Mr. Lamptey's comments on article 4 in connection with the "green jackets" case. He understood that that case would be brought before other human rights bodies, which would be looking at the Committee's interpretation of article 4.

11. On the subject of personal income in Greenland, the table in paragraph 4 of the ninth periodic report (CERD/C/184/Add.2) raised two interesting points. One was that the income level in Greenland was no lower than in Denmark as a whole. The other was that persons born outside Greenland but earning their income in Greenland earned more than the Greenlanders themselves. He requested an explanation of that discrepancy and, in particular, further information on the categories of persons included in the latter group. He would be interested in hearing the Danish representative's comments on whether the question of the steps taken by the Danish Government to implement the Convention specifically in Greenland was really relevant, since Greenland had had a system of local autonomy for a decade, covering nearly all issues included in article 5.

12. Referring to paragraph 39 of the eighth periodic report (CERD/C/158/Add.8) stating that there had been no instance of discrimination in the school sector, and to the comments made by Mr. de Gouttes, he said his impression was that intolerance towards foreigners or people who were different was on the increase. He wished to know whether the Government intended to respond to that situation, for instance, by amending the laws on immigration or using resources or funds to fight intolerance. The question of tolerance and minority rights was a delicate one. While non-discrimination and equal rights for minorities and the majority were a major concern in Denmark, the country's very liberal attitudes to such matters as religion or equality of the sexes conflicted with the views of many new immigrants, such as those from the Far and Middle East, who claimed certain rights that were not those of the majority. A case in point was the legally unexceptionable attendance by boys and girls alike in school physical education classes, which was disputed by those who did not wish their children to attend such classes. He would like to know whether the Covernment considered that there was a problem in that regard, whether it intended to take any action and whether, in fact, it considered such issues to be relevant to the Convention.

13. Mr. GARVALOV said that, like Mr. Reshetov, he had come away from the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe in Copenhagen with a very good impression of the functioning of democracy in Denmark. As an "élite" country in that respect, Denmark was inevitably under close scrutiny. On his return home, he had recommended to his new Government that useful lessons might be drawn from Denmark in making Bulgaria a more democratic country.

14. He understood that in some countries, especially in Europe, the establishment of political parties on ethnic grounds was authorized, and he wished to know whether there was any such provision in Danish legislation. If so, what was the situation if they advocated some form of discrimination?

15. He wished to know how the Convention was incorporated into Danish legislation and, specifically, whether compliance with the Convention was

written into the Constitution or a special Act, or whether legislation had merely been amended to conform to the requirements of the Convention.

16. Like Mr. de Gouttes, he was concerned about the lack of information on article 5. If there were different ethnic groups in Denmark, such as the German-speaking minority referred to by Mr. Reshetov, were they allowed to have their own press, in their own language?

17. The important statement in paragraph 5 of the eighth periodic report (CERD/C/158/Add.8) that Danish citizens were not registered according to ethnic origin reminded him of the earlier discussion (864th meeting) between Mr. Banton and Mr. Wolfrum about article 27 of the International Covenant on Civil and Political Rights and the definition of minorities. Since international human rights instruments had so far failed to specify exactly what was meant by a minority, he would be inclined to favour a rather restrictive interpretation. He quoted the examples of article 27 of the Covenant, which did not take into account the collective aspect of minority rights, and of the draft international declaration on the protection of minorities currently being considered by the Commission on Human Rights of the United Nations, on which no agreement had yet been reached. The problem of minorities had been discussed at length at the meeting of the Conference on Security and Co-operation in Europe in Copenhagen, and delegates had not agreed on collective or special rights for minorities. They had agreed that no single participating country could serve as a model for others in that regard.

18. Mr. YUTZIS said that in considering a periodic report, account should also be taken of what it failed to say. In that connection, he would like to know why the eighth periodic report (CERD/C/158/Add.8) of Denmark was silent with regard to article 5 of the Convention.

19. The report made no mention of progress with regard to the labour status of immigrants. Nor did it refer to developments regarding the process of granting autonomy to Greenland. Previous reports had indicated that all judges in Denmark, including those in Greenland, could become members of the Supreme Court and he would like to know whether a Greenlander was a member of the Court at the present time.

20. Mr. KOFOD (Denmark), replying to questions put by members, said that with regard to the judgements of the Supreme Court, his delegation would make the relevant texts available to the Committee as soon as they had been translated.

21. As to questions relating to Danish investments in South Africa, there were at present four Danish companies operating in that country. Two years earlier, there had been six and the previous year, five. That downward trend caused him to doubt that Danish investments in South Africa represented a considerable sum.

22. With regard to his country's re-establishment of a diplomatic mission in South Africa, he stressed that Denmark had never severed diplomatic relations with that country. It should be noted that Denmark's closure of its mission

in South Africa in 1985 had not been followed by similar action on the part of other countries, thus placing Denmark in a disadvantageous position in its efforts to bring pressure to bear on the South African Government.

23. With the transfer of ANC headquarters to Johannesburg, his Government had considered that in order to be able to conduct high-level talks with that organization, it was imperative to open a mission. That step had in no way changed his Government's general policy towards South Africa. The sanctions decided upon by the Nordic countries and the European Economic Community would remain in force until such time as a radical and irreversible change took place in that country. It should be noted that Denmark had never believed in total diplomatic isolation.

24. Mr. HAGEL-SØRENSEN (Denmark), referring to the question raised concerning the percentage of persons born in Greenland who were employed in the Greenland administration, said that the problem was to some extent a transitional one. Greenland had acquired home rule nearly 10 years previously. The situation in the country was changing and the number of persons employed in the administration who had been born and educated there was increasing.

25. As to the difference in the level of income between persons born in Greenland and those born elsewhere, it had been considered necessary to provide a higher remuneration for the latter group, who had had to relinquish normal family ties and move to Greenland. The home rule authority had recently decided to abolish that difference in remuneration.

26. With regard to a question raised by Mr. Foighel, he said that, under the Act establishing home rule in Greenland, legislation promulgated by the home rule authorities had to abide by all international obligations entered into by the Kingdom of Denmark. Therefore, all human rights should be strictly applied by the home rule authorities. In that connection, he said that the courts and the police were authorities of the Kingdom and not part of the home rule administration.

27. With regard to a question put by Mr. Vidas, he said that Greenland and the Faeroe Islands had two representatives in Parliament even though their total population did not warrant that number.

28. The possibility of a Greenlander becoming a member of the Supreme Court clearly existed, but account must be taken of the fact that there were only 15 judges on the Court.

29. It had been asked whether Greenlanders could receive passports like other members of the Danish population. The inhabitants of Greenland and the Faeroe Islands were Danish citizens and had the same rights as other citizens under the Constitution. However, as a result of a referendum, Greenland had left the European Economic Community and acquired an autonomous status. So long as a Danish citizen lived permanently in Greenland, he was unable to invoke rights under the regulations of the European Economic Community and could not receive a passport indicating that he was entitled to free movement within any member country of the Community. However, if he moved to Denmark, he would immediately become a citizen of the Community and could receive a normal Danish passport.

30. Referring to the comment that the report made no reference to article 5 of the Convention, he said that a basic principle of the constitutional system of Denmark was that everyone was equal under the law. Consequently, there was no need for the report to make specific reference, for example, to rules ensuring that foreigners had access to the courts, since they had such access and were also entitled to legal assistance.

31. With regard to the right to work, there was a high rate of unemployment in Denmark and the mere fact that a person was a foreigner did not mean that he would obtain work. In his opinion, it was necessary to provide foreigners with education and training so that they would be able to obtain employment. Positive action was therefore required and steps were being taken to provide schools and vocational training for foreigners.

32. Referring to the second sentence in paragraph 8 of the ninth periodic report (CERD/C/184/Add.2), he drew attention to the need to strike a balance between combating racism and ensuring freedom of information. In that connection, he referred to the case of the "green jackets" and said that the reason why the Supreme Court had dealt only with the journalist and programming officer was not that the "green jackets" had not been found guilty but that the case had not been referred to the Court on appeal. Furthermore, the "green jackets" had committed other crimes for which they had been sentenced to lengthy prison terms.

33. With regard to the point raised by Mr. Aboul-Nasr concerning The Satanic Verses, it was important to remember that there was no reference whatever to religion in the preamble to the Convention.

34. Mr. Banton had asked about new legislation enacted since Denmark had submitted its seventh periodic report. 2/ He himself considered that the country's system of laws was probably adequate; what was needed was more positive action. Denmark was also committed to implementing the legislation of the European Economic Community, and the Council of the Community had adopted a decision on combating racism and xenophobia on 29 May 1990.

35. With regard to the question by Mr. de Gouttes regarding the educational system (864th meeting), ethnic minorities in Denmark had a right to be educated in their own language. In one town, where immigrants accounted for about 13 per cent of the population, the schools used 12 or more different languages, although such provision was naturally very expensive.

36. The number of foreigners living in Denmark was still relatively small, so there was little racial tension. Sadly, however, there had been a clash between asylum-seekers and local residents the previous week, which was being investigated. Denmark tried to foster tolerance and provide a multi-cultural education for its people, but it was essential that the immigrants, too, should show tolerance and obey the laws of the country.

37. Mr. Banton had asked about an alleged quota system for accommodation in the town of Ishöj. There was, indeed, a rule which stated that foreigners could not move into an apartment if there were other foreigners in the same building, but the rule had been invoked only eight times, and six of those cases concerned families who were already resident in the town. He felt,

therefore, that the problem had been exaggerated, particularly since two of the local councillors of Ishöj were foreigners themselves, foreigners being eligible to stand in local elections in Denmark.

38. Mr. Reshetov had asked whether ethnic minorities could study their own language, and study other subjects in that language. The main groups in question were the people of Greenland and the Faeroes, and the German minority in South Jutland. The first two groups had their own recognized languages - Greenlandic and Faeroese, respectively - and official documents and laws were published in those languages. In fact, however, Danish was still widely used in Greenland for historical reasons. It was possible to study Greenlandic and Faeroese, in mainland Denmark, but only at university level.

39. The German minority of South Jutland was protected by an agreement concluded some 35 years before by Denmark and the Federal Republic of Germany, which guaranteed representation of the minority in both the Landestag (State Parliament) of Schleswig-Holstein in the Federal Republic and the South Jutland regional council, even though the group was too small to qualify for political representation under the normal electoral rules. The German population had its own schools and educated its children in German, as well as having its own German-language newspaper.

40. Mr. KOFOD (Denmark), answering the question about the transport of oil, said that all Denmark's sanctions against South Africa were still in force and any company which ignored them would be prosecuted. For instance, some 18 months before, a company in eastern Denmark had been heavily fined for exporting packing materials to South Africa.

41. Mr. ABOUL-NASR said that, admittedly, the Committee had been set up to deal with racial rather than religious discrimination, but it had always dealt with religious matters if they had given rise to racism. The Danish representative had said that the book, The Satanic Verses, was not banned in Denmark because any insult it contained was an insult to the religion of Islam rather than an insult to Muslims. He was sure, however, that anti-Semitic remarks were not permitted in Denmark, and he found it difficult to see why, in that case, insults to Islam should be permitted. He had the greatest admiration for Denmark's human rights record, but he would welcome some further clarification on that point.

42. Mr. YUTZIS thanked the Danish representatives for their explanations and for their frankness about the recent incident of racial tension, which would, no doubt, be fully described in Denmark's next report.

43. He had asked why there were no Greenlanders in Denmark's Supreme Court, although he had not, of course, meant to suggest that a judge should be appointed solely on grounds of ethnic origin. He did not, however, feel that Denmark could continue for much longer to say that the absence of Greenlanders from senior posts was due merely to chance.

44. The Danish representative had said that job prospects for immigrants in Denmark were unfavourable because of the country's high rate of unemployment generally. However, everyone knew that immigrants were the first to suffer when the job situation deteriorated. Of course, an immigrant did not have an

automatic right to a job merely by virtue of being an immigrant, but he felt that immigrants were being permanently excluded from some areas of employment on the pretext of a poor labour situation. In his view, the unified labour market proposed by the countries of the European Economic Community was bound to affect the status and job prospects of immigrants from outside the Community; it was a question which the Committee would be obliged to address more and more urgently in the future.

45. Mr. BANTON agreed with Mr. Aboul-Nasr that it was often difficult to distinguish religious from racial discrimination. In the United Kingdom, white youths sometimes shouted the word "Rushdie" as an insult to people they believed to be Pakistani, and therefore Muslims.

46. The Committee had very high expectations of Denmark, and he hoped that the Danish representative would think again about the assertion that positive action in favour of immigrants was unlikely to be successful in a situation of high unemployment and that it was better to concentrate on improving education and training. Denmark had a commitment under article 6 of the Convention to protect immigrants against discrimination in employment; although extra training might be desirable in itself, it was not an alternative. Denmark could easily follow the example of another European country which had laid down a code of practice for employers, requiring them to prove that they had treated foreign job applicants fairly. It was thus clearly possible to protect the special needs of immigrant workers, even in a time of high unemployment.

47. The CHAIRMAN, speaking in his personal capacity, said that Denmark was presumably a party to the International Covenant on Civil and Political Rights, article 19 of which stated that the right to freedom of expression could be curtailed in certain circumstances in order to protect, among other things, the religious beliefs of others. The Danish representative had said that the law against blasphemy had rarely been invoked in Denmark; he thought, however, that that was no defence, since the law applied only to Christianity, which was the dominant religion in the country. The law against blasphemy should, in his view, be extended to other religions in order to give the right of legal redress to all religious minorities.

48. Mr. GARVALOV said that he had noted a new form of racial discrimination which was developing throughout the world, and especially in Europe. Under article 5 of the Convention, a person had the right to leave any country. However, many people who wished to leave their own country for another were hampered by an excessive delay in the issuing of visas - an applicant might wait up to six months for a visa, with no guarantee that one would be issued at all. Such delaying tactics could be seen as racial discrimination against, for instance, a Slav who wished to move to a Germanic country, and it seemed to him that such practices contravened article 5 of the Convention, as well as other international instruments. He believed that the new form of racial discrimination which he had described would become more and more widespread in the future.

49. Mr. LAMPTEY pointed out that, under article 5 of the Convention, a person had the right to leave any country, but only had the right to enter his or her

own country. No one had a natural right to enter a country merely because he wished to do so. It was important to remember that Denmark had an excellent record for accepting large numbers of immigrants.

50. Mr. FERRERO COSTA said the major changes that had recently been taking place in the world situation would lead to new challenges in the matter of preventing racial discrimination. Although in Europe the East-West conflict was disappearing, substantial problems could arise as a result of immigration and, accordingly, the rights of freedom of movement affirmed in article 5 (d) of the Convention. Where the interpretation of those rights was concerned, he agreed with the approach suggested by Mr. Garvalov rather than the more restrictive one favoured by Mr. Lamptey.

51. The information provided by the representatives of Denmark had been wide-ranging and had led to a very valuable exchange of views. The fact that Denmark, with its notable human rights record, continued to experience problems relating to discrimination had led to an unusually thoroughgoing discussion.

52. Mr. HAGEL-SØRENSEN (Denmark), referring to the comments by Mr. Shahi and Mr. Aboul-Nasr, said that, in his view, there was a difference between a defamatory utterance directed towards a person or group of persons and a statement denigrating a religious or other belief as such. Thus, insulting comments about Jews or Muslims, for example, were punishable under Danish law, but it would be to go one step further to claim that expressions of hostility to the Koran would constitute an offence. However, article 140 of the Penal Code did stipulate that anyone publicly denigrating a religious belief or those professing it was liable to imprisonment. A similar provision applied to anyone making defamatory or threatening statements against persons because of their race, colour, national or ethnic origin, or their beliefs.

53. One reason why Salman Rushdie's book, The Satanic Verses, was openly on sale in Denmark was that there had been no request to the Prosecutor General to initiate proceedings against it. In such a case the issue of literary value would also have to be taken into account, as it would in respect of pornographic works.

54. Mr. Shahi had raised the question of extending to Muslims the right to bring a case under the heading of blasphemy. Consideration could be given to that possibility, but to some extent immigrant minorities had to be prepared to accept the alien and perhaps uncongenial customs of the majority population of the host country. For example, in regard to modes of dress, could Danish women be expected to wear the chadar in deference to the views of a Muslim minority?

55. Turning to a point raised by Mr. Banton, he questioned the effectiveness of requiring employers to keep comprehensive records regarding the numbers of disabled persons, blacks, women, etc. in their workforce, and of affirmative action in general. However, that and the question of the rights specified in article 5 of the Convention would be addressed more fully in his country's tenth periodic report.

56. The CHAIRMAN, speaking in his personal capacity, said he thought that to equate the notion of an insult to Islam with a breach of a code of dress was to over-simplify a complex issue.

57. Speaking as Chairman, he thanked the representatives of Denmark, whose contribution had occasioned a candid and stimulating exchange of views, and said that the Committee had thus concluded its consideration of the eighth and ninth periodic reports of Denmark (CERD/C/158/Add.8 and CERD/C/184/Add.2).

Mr. Kofod and Mr. Hagel-Sørensen (Denmark) withdrew.

Organization of work

58. Mr. HUARAKA (Secretary of the Committee) said that a request had been received from the Permanent Mission of Qatar for postponement of the discussion of that country's sixth and seventh periodic reports (CERD/C/156/Add.2 and CERD/C/182/Add.1), as the current situation in the Middle East would make it difficult for Qatari representatives to be present.

59. The CHAIRMAN said that, following discussions held the previous day on the best use of the Committee's time, the officers of the Committee had consulted the representative of the Secretary-General, who had informed them that a number of countries, including Australia and Malta, would be unable to send representatives for the presentation of their countries' reports at the current session.

60. In reply to a question by Mr. RHENAN SEGURA, Mr. HUARAKA (Secretary of the Committee) said that, in preparing the provisional agenda, reports were scheduled in the order of submission, and States were then informed that a tentative date had been fixed for their consideration. The Permanent Missions of the States concerned were contacted during the two weeks prior to the session, but it was not possible to exclude or foresee all last-minute cancellations.

61. Mr. WOLFRUM wondered whether cancellations were always justified and whether the Committee might not envisage considering reports even in the absence of representatives of the countries concerned.

62. Mr. FERRERO COSTA proposed that the Committee should decide either to adopt such a procedure or to discuss the question of cancellations as an item of its agenda.

63. Mr. LAMPTEY said that although the Committee had not been able to consider the reports of Qatar, it had occupied its time profitably in discussing the issues raised by the periodic reports of Denmark.

64. He could not concur with the suggestion made by Mr. Wolfrum and Mr. Ferrero Costa; it was difficult to establish a dialogue with States, and the purposes of the Committee would not be well served if their representatives were not present for the consideration of their reports. The best approach was for the Committee to be patient.

65. Replying to comments by Mr. YUTZIS and Mr. ABOUL-NASR, the CHAIRMAN said that a revised programme of work had been distributed, and that matters relating to article 15 would be considered under agenda item 9.

66. Mr. de GOUTTES said that the issue raised by Mr. Wolfrum was important, and should be discussed either in the Committee or by its officers. He agreed with other speakers, however, that a cautious approach was required. Some countries might have perfectly legitimate reasons for requesting a postponement and, as a matter of courtesy, the first step should be to ask them for an explanation. Consideration might also be given to establishing a minimum period of notice.

67. The CHAIRMAN said that the points raised during the discussion would be considered, together with other organizational matters, at the meeting of the Committee's officers the following morning.

The meeting rose at 6.10 p.m.

Notes

1/ See International Legal Materials, vol. XXIX, No. 5, September 1990.

2/ CERD/C/131/Add.6.

866th meeting

Wednesday, 8 August 1990
at 10.10 a.m.

Chairman: Mr. SHAHI

AGENDA ITEM 7

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Second, third and fourth periodic reports of Bangladesh (CERD/C/144/Add.3)

At the invitation of the Chairman, Mr. Rashid (Bangladesh) took a place at the Committee table.

1. Mr. RASHID (Bangladesh) emphasized that his country's Constitution was unique of its kind, since it imposed an obligation on the State to support oppressed peoples waging a just struggle against imperialism, colonialism or racism. The Constitution also contained the fundamental rights set forth in the Universal Declaration of Human Rights. People could exercise those rights in the courts.

2. Bangladesh had always staunchly opposed all forms of racial discrimination, as was demonstrated by its participation in the United Nations Transition Assistance Group (UNTAG) in Namibia and the nomination of a Bangladeshi as Rapporteur General by the Second World Conference to Combat Racism and Racial Discrimination. 1/

3. Concluding his brief introduction, he said that, with the exception of a few hundred thousand persons living in the south-east of the country, the 110 million population of Bangladesh was homogeneous.

4. Mr. FERRERO COSTA, speaking as Rapporteur appointed for the preliminary examination of the reports of Bangladesh, which appeared as one report in a single document (CERD/C/144/Add.3), thanked the representative of Bangladesh for his introduction. He regretted that the consolidated report of Bangladesh, which was in fact only the second report submitted by that State party, was so short and that, like the initial report, 2/ it had not been drafted in accordance with the guidelines (CERD/C/70/Rev.1) issued by the Committee and the provisions of article 9 of the Convention. For lack of detailed information, therefore, it was very difficult for the Committee to put specific questions to the representative of Bangladesh. The Committee hoped that the Government of Bangladesh would take those observations into account when it drafted its next report.

5. He was surprised to read in paragraph 3 of the report that no form of discrimination existed in Bangladesh. As far as the Committee was concerned, no country in the world could make such an assertion.

6. He would welcome further information on the composition of the population of Bangladesh and, in particular, on the "backward sections of citizens" referred to in paragraph 4 of the report.

7. Paragraph 5 of the report stated that the Government's policy of elimination of racial discrimination was further borne out by the Penal Code. However, the cited provisions of the Code dealt only with attacks against religion. Did the Penal Code or any other law contain a provision fully consistent with article 4 of the Convention?

8. Paragraph 6 stated that in Bangladesh religious and customary laws of different races, religions and ethnic groups were recognized as personal laws and enforceable in the courts. Did that indicate the coexistence of various laws regulating the same legal situations differently depending on the nature of the racial, religious or ethnic group in question? In some cases that might lead to discrimination. Generally speaking, it would be useful for the Committee to have further information on the functioning of the Bangladesh legal system.

9. Paragraph 7 of the report of the State party said that the Convention itself could not be invoked and directly enforced by the courts of Bangladesh. What measures did the country intend to take to change that situation?

10. In paragraph 9 it was stated that between March 1982 and November 1986 the country had been under martial law and the Constitution suspended. Had similar suspension measures been taken subsequently? When the Constitution was suspended, who determined the legal rules to be applied and what were those rules? Lastly, what concrete measures had the Government taken during the period of martial law to "emphatically condemn" any racial discrimination?

11. In conclusion, he emphasized that the presence of the representative of the Government of Bangladesh attested to its willingness to hold a dialogue with the Committee.

12. Mrs. SADIQ ALI pointed out that the Chittagong Hills had a tribal population (numbering 600,000) who feared that their traditional way of life was being undermined by the 300,000 Bengalis who had settled in the region. There had been armed clashes between members of the two communities. Had the Government succeeded in dissuading new settlers from moving into the region and had it put an end, in accordance with its assurances to Amnesty International, to the reprisals inflicted on the tribal population by the security forces? Furthermore, did the tribal population participate in presidential and parliamentary elections? How many seats did it have in Parliament? And what were the local bodies responsible for the tribal population?

13. At present there were 70,000 Chakma refugees in India, which had given Bangladesh an assurance that none of them would use Indian territory to carry out subversive activities against Bangladesh. What steps had the Government of Bangladesh taken to create favourable conditions for the return of the Chakma refugees?

14. There were also illegal immigrants from Bangladesh in India, particularly in Calcutta, where their presence posed a serious demographic problem. What solution was envisaged for that problem?

15. On another point, had action been taken to establish a legal framework which would permit the enforcement of a decision on the property of Hindus who had emigrated to India?

16. Approximately 250,000 non-Bengali Moslems, known as Biharis, were in Bangladesh pending their resettlement in Pakistan. Those living in camps could seek employment, but they were disadvantaged by not holding Bangladesh citizenship. Could such persons apply for citizenship? Some Biharis had also lost their property under legislation providing for the confiscation of Pakistani assets. Although the Government's official policy was to ensure freedom of religion in accordance with article 5 of the Convention, minority religious groups had been subjected to harassment and acts of vandalism. Had the official inquiry produced any results and had the perpetrators been punished?

17. The Bangladesh authorities were violating the right to freedom of opinion and expression (Convention art. 5 (d) (viii)) when they used censorship, ordered the temporary closure of newspapers, arrested journalists and engaged in acts of intimidation against them.

18. With respect to article 6, the civil courts were overburdened and available only to persons who could afford legal representation, a fact which discouraged many injured parties from seeking redress through the courts.

19. In June 1988, the Bangladesh Constitution had been amended to establish permanent benches of the High Court Division in six provincial cities, with a view to affording better services to the majority of the population. With funding from the Asia Foundation and the United States Government, a Bangladesh non-profit human rights association had been able to establish a training programme for new lawyers. Bangladesh was to be congratulated on that exemplary initiative. Lastly, she hoped that the next report of Bangladesh would include, inter alia, information about the human rights cases brought before the courts.

20. Mr. WOLFRUM said that he would welcome detailed information on the composition of the population of Bangladesh and the status of the stateless persons who had been refused Bangladesh nationality, and on the "backward sections of citizens" referred to in paragraph 4 of the report. What was the Government doing to help the latter category of the population to preserve its way of life? Had the Government of Bangladesh concluded an agreement with the Government of Pakistan concerning the property of persons who had left Bangladesh for Pakistan? In conclusion, he pointed out that paragraph 5 of the report dealt with religious problems and not with racial discrimination.

21. Mr. de GOUTTES also expressed the wish that the next report of Bangladesh should be more detailed, especially with regard to the composition of the population and the situation of minorities. Referring to paragraph 7 of the report, which said that the Convention itself could not be invoked and directly enforced by the courts, he asked what action the Government had taken to ensure the incorporation of the Convention in domestic law, and specifically what sanctions were provided for in the event of violation of article 28 of the Constitution, which prohibited all discrimination. Lastly, he asked whether the provisions of the Penal Code referred to in paragraph 5

of the report, concerning attacks against religious beliefs, applied only to the State religion - Islam - or to all religions.

22. Mr. SHERIFIS thanked the representative of Bangladesh for having supplemented orally a somewhat brief report. Although the Committee now knew that Bangladesh had spared no effort to implement article 3 of the Convention, it lacked sufficient information to reach a conclusion on the implementation of other articles, in particular articles 2, 4, 5, 6 and 7. Like the other members of the Committee, he hoped to receive suitable answers on those various points, either orally or in the next periodic report. In that connection, the next report, unlike the document under study, should be drawn up in accordance with the Committee's guidelines. He, too, would like to have precise demographic data on Bangladesh.

23. Mr. SONG Shuhua welcomed the fact that in his oral introduction the representative of Bangladesh had to some extent expanded on what was a very brief report, but he would like him to give more information about the particular legal system referred to in paragraph 6 of the report (laws applicable to certain groups of persons). Although there seemed to be few minorities in Bangladesh, it would still be useful to know whether those few had specific education programmes. Paragraph 4 of the report mentioned a "special provision" and a reserved "quota" of jobs for the "backward sections of citizens". How big was the quota? He hoped that the next report of Bangladesh would take up all the questions raised by the implementation of the Convention and that it would be drawn up in accordance with the Committee's guidelines.

24. Mr. YUTZIS made the general observation that, by acceding to a convention on human rights, the signatory State, although sovereign, nevertheless accepted a certain interference in its domestic affairs; in the case of Bangladesh it was very important, owing to the extreme brevity of the report, that the representative of the country should agree to answer the Committee's questions. He should therefore be thanked for that. He (Mr. Yutzis), regretted that as a whole the report of Bangladesh remained very abstract. However important they might be, it was not enough to cite the provisions of the Constitution; it was also necessary, indeed vital, to provide specific information on the implementation of the fundamental law. It was to be hoped that the next report of Bangladesh would in that respect rectify the shortcomings of the report under study.

25. One could not help being concerned about paragraph 9 of that report. The only measures of a political nature mentioned in it were the proclamation of martial law and the suspension of the Constitution. Was the Committee to regard as a positive element the mere fact that no legislative or administrative measures had been taken during the period which might have violated the principles of the prohibition of racial discrimination? In article 2 (1) (c), of the Convention, States did not undertake to avoid measures of racial discrimination but to take effective measures to put an end to discriminatory practices. Similarly, was the Committee to regard as positive the fact that, when martial law was in force, "all the penal provisions of laws providing for protecting fundamental rights relating to religion remained undisturbed and enforceable"? In any event, paragraph 9 called for considerable clarification.

26. Mr. RASHID (Bangladesh) thanked the Committee for the keen interest it had shown in his country. He regretted that the periodic report had not been drawn up in accordance with the Committee's guidelines and assured the Committee that the fault would be rectified in the next report. He suggested that the Committee should not always meet in Geneva, but should also meet in other parts of the world; in that way, the Governments of the region would find it easier to send experts to report to the Committee, which would thus have a greater amount of information. Furthermore, the members of the Committee would be able to familiarize themselves with the problems arising on the spot. In that connection, Bangladesh was a country open to anyone who wished to go there.

27. In response to requests by several members of the Committee, he presented a number of demographic statistics. Bangladesh had a population of 110 million. Its annual population growth rate was 2.2 per cent, which the Government was trying to reduce to 1.8 per cent. Eighty-seven per cent of the population were Muslim, 12.1 per cent Hindu, 0.6 per cent Buddhist and 0.3 per cent Christian. With the exception of the 13 tribes in the Chittagong Hills, which had some 500,000 members, the population of Bangladesh was homogeneous.

28. By "backward sections of citizens" (CERD/C/144/Add.3, para. 4), were meant the least developed population groups, i.e. in general terms, those living far from the major urban centres and, more specifically within those groups, women. The five-year plan under preparation envisaged the decentralization of economic activities to facilitate the development of the disadvantaged areas.

29. The laws referred to in paragraph 6 of the report were the customary laws of various religious groups and they related essentially to matters of marriage and inheritance. Such laws were applied by the courts on the same footing as general laws. Apart from those areas of particular customary law, the legal system was the same for all.

30. With regard to the Chittagong Hills he reminded the Committee that the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in its decision 1989/109, had "thanked the Government of Bangaldesh for its cooperation and expressed its satisfaction with the progress made in respect of the treatment of its tribal populations". In May 1989, elections had been held in the region with a view to facilitating the autonomy of the tribal populations, and the law provided that the presidents and the majority of members of district councils must be indigenous persons. The elections had been followed closely by the international media, which had stressed that they had been conducted properly and fairly. The Chairmen of the district councils had the status of Deputy Ministers of the Government. The elections had destroyed the myths put about by the extremists; unfortunately, a handful of hardliners had rejected the verdict of the ballot box and were continuing their propaganda.

31. The Bangladesh refugees who had been mentioned were not refugees in the traditional meaning of the term. They were in a way being held hostage by a group of terrorists known as Shanti Bahini. Many had managed to return to Bangladesh, but others were still prisoners of that armed group. Several

international journalists and observers had confirmed that situation. The Governments of Bangladesh and India were continuing their discussions to determine means for the refugees to return to Bangladesh. His country was also providing material assistance to Bangladeshis returning to the national territory.

32. His Government had set up trust funds for the various religious communities. The Muslim, Buddhist, Christian and Hindu communities each received a sum of 10 million rupees, which they managed themselves and which enabled them to restore and maintain all their churches and places of worship.

33. As far as the Biharis were concerned, it should be noted that they had been offered Bangladesh nationality in 1972 but the majority of them had preferred to retain their Pakistan nationality. Those who had become citizens of Bangladesh participated fully in the life of the nation. The repatriation of such persons posed serious financial problems. An Islamic social organization based in Saudi Arabia had been trying for several years to obtain funding for the operation, but the venture had not yet been brought to fruition. The 200,000 Biharis represented an additional food burden for Bangladesh; nevertheless, the Government felt morally bound to meet the needs of those innocent persons, who simply wished to return to their country. A delegation from the Office of the United Nations High Commissioner for Refugees had been sent to Bangladesh in order to study the conditions for the return of the Biharis to Pakistan. Pending their repatriation, the High Commissioner planned to provide them with vocational training, which would certainly be of use to them. Indeed, there was no reason why the Biharis should not recover their confiscated property if that was in conformity with the laws currently in force in Bangladesh.

34. Since 1972 Bangladesh had enjoyed exemplary racial harmony in its territory. During his visit in November 1986, Pope John-Paul II had also noted the harmony among the various religious communities. Only certain journalists were attaching exaggerated importance to minor incidents for personal purposes. The Governments of Bangladesh and Pakistan were studying the two issues which had arisen with the founding of Bangladesh, i.e. the distribution of property and the repatriation of Pakistan citizens.

35. Turning to paragraph 8 of the report, he said that under article 102 of his country's Constitution any person could denounce before a court any law which he did not think was in conformity with the provisions of the Constitution. A citizen had recently brought a case before the Supreme Court, alleging that a constitutional amendment proposed by Parliament was illegal. Parliament had had to withdraw its amendment. That concrete example demonstrated that the executive, legislative and judicial authorities operated in an absolutely independent manner in Bangladesh.

36. With respect to paragraph 7 of the report, he explained that provisions of international law could not be applied as such in Bangladesh unless they had first been incorporated in national legislation. That therefore applied to the provisions of the Convention.

37. As to paragraph 9 of the report, he stressed that, even during the period when the Constitution had had to be suspended and martial law proclaimed, no

legislative or administrative measure taken had been at variance with the principles of the prohibition of racial discrimination. In that particular context, too, the provisions of the Convention had been observed.

38. The CHAIRMAN thanked the representative of Bangladesh for the additional information he had furnished concerning implementation of the Convention. He nevertheless recalled that the Committee would like to know the extent to which certain obligations under the Convention were not covered by the laws of Bangladesh.

39. Mr. SHERIFIS said that the guidelines concerning the content and form of reports should again be brought to the attention of the relevant authorities in Bangladesh. With regard to the proposal by the representative of Bangladesh that sessions of the Committee should also be held in other parts of the world, he pointed out that the main obstacle was the lack of funds, which sometimes affected even the regular holding of sessions in Geneva. He thanked the representative of Bangladesh for the information he had provided, expressed the hope that it would appear in writing in the next report of Bangladesh and requested him to bring the Committee's guidelines to his Government's attention.

40. The CHAIRMAN said that the Committee had thus concluded its consideration of the second, third and fourth periodic reports of Bangladesh (CERD/C/144/Add.3).

Mr. Rashid (Bangladesh) withdrew.

The meeting was suspended at 12.10 p.m. and resumed at 12.20 p.m.

Ninth and tenth periodic reports of Finland (CERD/C/159/Add.1 and CERD/C/185/Add.1)

At the invitation of the Chairman, Mr. Aarnio and Mrs. Mattila (Finland) took places at the Committee table.

41. Mr. AARNIO (Finland) said that he would limit himself to an account of new developments since the preparation of his country's tenth periodic report (CERD/C/185/Add.1) which, like the ninth report (CERD/C/159/Add.1), dealt mainly with action taken to improve the living conditions of the country's two ethnic minorities - the Samis (or Lapps) and the Romanies (or Gypsies).

42. He wished to point out that the Sami Nordic Council had recently been granted consultative status with the Economic and Social Council of the United Nations, a development which was most welcome. Furthermore, Finland had ratified the European Convention on Human Rights in May 1990. Its only reservation, due to occasional lack of resources, concerned examinations in the courts.

43. With regard to article 2 of the Convention, he would deal first with the Samis. The Committee responsible for preparing amendments to the electoral law had proposed adding to the Constitution a new provision under which the Parliamentary committees would have to give a hearing to representatives of the Samis whenever they were considering bills concerned specifically with the

rights of that minority. No text had yet been submitted to Parliament to give effect to the proposal. The Advisory Board for Sami Affairs had prepared a comprehensive bill on the rights of the Samis, a matter referred to in paragraph 11 of the tenth periodic report, and was proposing its adoption. Among other things, State forests would be made available to the Samis. No comments had yet been received on the bill.

44. Finland had not yet been able to ratify the Indigenous and Tribal Peoples Convention (ILO Convention No. 169 (1989)) in independent countries, mainly because the laws on the property rights of the Samis did not correspond to the provisions of the Convention. In 1989, a thesis on the ancient rights of the Samis to the land they had traditionally occupied, presented at the University of Lapland, had caused a sensation in Finland and the other Nordic countries. The thesis put forward arguments of the greatest interest for the determination of the property rights of the Sami minority.

45. The bill on reindeer husbandry (ibid., para. 12) had been submitted to Parliament. The representatives of the Sami delegation had had an opportunity to give their views on the text to the parliamentary commissions. The Reindeer Management Act (ibid., para. 14) had already been promulgated. As to the Sami Language bill (ibid., para. 15), a working group made up of representatives of the minority and of the Ministry of Justice had submitted a text on which comments were currently being canvassed. The Bill would probably be submitted to Parliament in the autumn of 1990.

46. The University of Lapland's further training centre had organized at Inari in 1989-1990 a theatre course in Sami attended by 20 students, including 12 Finnish Samis, 4 Norwegian Samis and 4 Finns with a good knowledge of the language. The State had made a grant of 1 million markkaa (US$ 260,000).

47. Where the Romanies were concerned, it should be pointed out that the Advisory Board for Gipsy Affairs had been renamed, at their request, the Advisory Board for Romany Affairs. From the autumn Romany students in the Helsinki region would be able to learn the Romany language at evening classes and the Board was to organize vocational training courses for 50 Romany adults in various fields (Romany dressmaking, horse-husbandry, car mechanics, etc.). The 15 students taking the first elementary course in the Romany language (CERD/C/185/Add.1, para. 51) had all obtained their diplomas, and nine of them had immediately taken jobs as teachers. Fifteen Romany adults would be able to take the course in Romany language, history and culture which was to begin in the autumn.

48. With regard to article 3 of the Convention, Finland had lifted all the sanctions against Namibia on 25 March 1990, on the occasion of that country's accession to independence.

49. As to articles 4 and 5 of the Convention, the proposal for the adoption of a new penal provision on discrimination (ibid., para. 56) had been submitted to Parliament. The bill on the revision of the legislation on breach of authority (ibid., para. 60) had been adopted and promulgated.

50. The CHAIRMAN invited Mr. Song Shuhua, the specially appointed Rapporteur, to take the floor.

51. Mr. SONG Shuhua said that the ninth and tenth periodic reports (CERD/C/159/Add.1 and CERD/C/185/Add.1) submitted by the Government of Finland were fully in conformity with the guidelines issued by the Committee and furnished detailed information indicating an improvement in the living conditions of the two national minorities.

52. According to paragraph 1 of the ninth periodic report, "Finland has continued her policy aiming at guaranteeing all Finnish citizens the same rights and fundamental freedoms in the political, economic, social, cultural and other fields irrespective of race, ethnic origin or religion". He would like to know whether persons who were not Finnish citizens enjoyed the same rights. He also requested further information on the employment situation of immigrants and refugees.

53. The Finnish Government had admittedly taken concrete action to improve the lot of the Samis, but it was not known whether its action had produced positive results. Paragraph 12 of the ninth periodic report indicated that areas of reindeer grazing, hunting, berry-picking and fishing had been so intensively exploited for their timber and water resources that "the Samis' livelihood had been jeopardized". He would like to know whether the body responsible for Sami affairs had taken action to remedy the situation and whether such action had already produced results. In addition, according to the tenth periodic report, Sami education was suffering from a shortage of classrooms and teaching materials. What was the Government doing to solve that serious problem?

54. With regard to article 3 of the Convention, although Finland had introduced a whole range of measures against apartheid, it still maintained diplomatic relations with South Africa. He would like further information on the pressure brought to bear by the Finnish Government to combat apartheid.

Mr. Vidas (Vice-Chairman) took the Chair.

55. Mr. ABOUL-NASR quoted from paragraph 6 of the ninth periodic report, which read: "In Finland a person is considered Sami if he, or at least one of his parents or grandparents, spoke Saami as the first language. The language has always been the main criterion in determining whether or not a person is Sami". He had difficulty in seeing how language could be the main criterion for determining membership of a minority or ethnic group. His confusion increased when he read in paragraph 41 of the tenth periodic report that the Romanies spoke "Finnish as their mother tongue though Romany is spoken to some extent". There thus seemed to be a degree of vagueness in that area. To his mind, the only valid criterion was the deep feeling that an individual might have that he belonged to a given group.

56. Under an agreement recently concluded with the Soviet Union, Finland was now receiving Soviet Jews departing for Israel. He would like to know whether such emigrants, once in Finland, could decide to remain in the country and acquire refugee status or even freely choose a destination other than Israel, for example the United States.

57. Mr. WOLFRUM agreed with Mr. Aboul-Nasr that language could not be used as the sole criterion for determining membership of a minority. The sense of identity of the person concerned should indeed be taken into account. In other words, subjective considerations must be given due weight.

58. The reports submitted by Finland focused on the two minorities living in that country. The Convention was concerned not only with minorities but also with ethnic groups and thus covered a much broader field. He would like to know the situation of the refugees who had arrived from Asia and Africa in recent years and of the Swedish population living in Finland. He also asked whether there were any political or cultural links between the Samis of Finland, Norway and Sweden and, if so, whether the Governments of those three countries approved such links and had made any specific arrangements in that respect. Lastly, he would like to know the rate of illiteracy among the Samis and Romanies and how the Finnish Government recruited teachers of Romany.

59. Mr. LECHUGA HEVIA said that, in order to get a clearer idea of the situation of the Samis and Romanies vis-à-vis the rest of the population of Finland, it would be useful to have some comparative data on the rate of school attendance, access to health services, the unemployment rate, the infant mortality rate, life expectancy, juvenile delinquency, and employment in the civil service and the professions.

60. Mr. GARVALOV asked whether the provisions of the Convention could be invoked in the courts without having been previously incorporated in Finnish law. He would also like to know whether the courts had dealt with any new cases of racial discrimination since 1986 and to have information on the way in which Finland was implementing article 5 of the Convention.

61. Like Mr. Aboul-Nasr and Mr. Wolfrum, he did not see why language should be the main criterion for determining membership of the Sami minority. Lastly, he asked which language was used in the courts and whether Finland had only one official language or whether Swedish was also officially recognized.

The meeting rose at 1.05 p.m.

Notes

1/ See Report of the Second World Conference to Combat Racism and Racial Discrimination, Geneva, 1-12 August 1983 (United Nations publication, Sales No. E.83.XIV.4 and corrigendum), chap. I.

2/ CERD/C/61/Add.4.

867th meeting

Wednesday, 8 August 1990
at 3.10 p.m.

Chairman: Mr. SHAHI

AGENDA ITEM 7

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Ninth and tenth periodic reports of Finland (CERD/C/159/Add.1 and CERD/C/185/Add.1 (concluded)

At the invitation of the Chairman, Mr. Aarnio (Finland) took a place at the Committee table.

1. Mrs. SADIQ ALI asked whether there had been any amendment to the 1985 Act on certain measures against South Africa (Act No. 1104/1985), referred to in paragraph 55 of the tenth periodic report (CERD/C/185/Add.1), and whether Finland had resumed a programme of assistance to Namibia on any large scale.

2. Mr. FOIGHEL said that the two periodic reports of Finland (CERD/C/159/Add.1 and CERD/C/185/Add.1) were of great interest and showed the Finnish Government's keen respect and concern for the minorities in its country.

3. A number of speakers had asked whether there was any definition of what constituted the Sami and Romany populations. His own question, on the other hand, was whether a definition was necessary for practical and legal purposes, even if it might be of benefit to medical science, sociology or anthropology. The problem had arisen in his own country, Denmark, in connection with the Greenlanders, and no acceptable definition had been arrived at. He himself inclined to the view expressed at the previous meeting by Mr. Garvalov (866th meeting), which was basically that the individual could choose for himself what ethnic group he belonged to.

4. Noting the two cases of discrimination mentioned in paragraph 59 of the tenth periodic report, he asked what forms of discrimination the courts had been dealing with in those cases.

5. Reference had also been made by the representative of Finland to an academic thesis on the ancient rights of the Sami to the lands they traditionally occupied. Was the text available and, if so, in what language?

6. Mr. SHERIFIS, referring to paragraph 58 of the tenth periodic report (CERD/C/185/Add.1), asked whether there was a special quota in the civil service for minorities such as the Samis or Romanies. He would like to know whether the Finnish Constitution contained any provision for the representation of minorities in Parliament or the Government.

7. Paragraph 8 of the same report indicated that the criterion for treating a person as a member of the Sami ethnic group was linguistic, but he recollected that, according to an earlier periodic report by Finland, the

Swedish-speaking population was not regarded as a distinct ethnic or racial entity. The point raised by that apparent discrepancy was an important one, and he would welcome some clarification, either from the Finnish representative during the meeting or in a future periodic report.

8. In general, the periodic reports from Finland, which were exemplary in their presentation, indicated that there was little racial discrimination in that country.

9. Mr. de GOUTTES said that the information contained in the tenth periodic report (CERD/C/185/Add.1) was most valuable, but that it would be useful to hear, in particular, of recent developments in connection with the new law on the rights of the Samis, which was mentioned in paragraph 11 of the report, and on the proposed reform of the Penal Code to include the new penal provision on racial discrimination referred to in paragraph 56. He would also be interested to learn more about the current status of the bill for a Reindeer Management Act mentioned in paragraph 14 of the report and the legislation on the use of the national languages in the field of health and social welfare mentioned in paragraph 16 of the report. With regard to the activities of the National Board of General Education which were referred to in paragraph 35 of the report, he asked what the two working groups on the syllabus had done so far and what they intended to do in future.

10. He would welcome more general information on demographic trends in Finland, particularly with respect to immigrants and the possible impact of an increase in the immigrant population on employment, social welfare, housing and education.

11. Mr. YUTZIS said that there were some gaps in the otherwise admirably comprehensive periodic reports of Finland (CERD/C/159/Add.1 and CERD/C/185/Add.1).

12. The information provided in connection with articles 2 and 4 of the International Convention on the Elimination of All Forms of Racial Discrimination did not seem to give any details of legislative measures aimed at preventing the emergence of organizations advocating racial discrimination, nor did it indicate what action the Government would take in the event of such organizations being established. The emphasis in the reports seemed to be on measures affecting individuals rather than organizations or groups.

13. He found it regrettable that so little information had been provided under articles 3 and 6, and would be grateful for some details of measures in the field of education with a view to combating racial prejudice which were covered by article 7.

14. In connection with article 5, he stressed that labour problems were of increasing importance in the context of racial discrimination, since racism traditionally fluctuated according to economic conditions, reaching its maximum intensity in times of economic crisis. He hoped that the next periodic report would outline trends in the employment situation in Finland, and indicate whether the number of immigrants was increasing or declining.

15. Referring, in conclusion, to paragraph 41 of the tenth periodic report, he asked whether the Romanies in Finland were losing their language, and if so, whether that was of their own volition or the result of pressure for full integration in Finnish society; if the latter, was there not a danger that the Romanies in the country would forfeit their identity?

16. Mr. AARNIO (Finland), replying to the questions asked by members of the Committee, said that some of the issues raised were complex and that it would be preferable to deal with them in a subsequent periodic report.

17. In reply to Mrs. Sadiq Ali, he said that sanctions against Namibia had been suspended since the country had become independent, but that he was not in a position to give any information on the scale of Finnish assistance to that country.

18. Mr. Song Shuhua had raised a number of points, the first relating to paragraph 1 of the ninth periodic report (CERD/C/159/Add.1). All foreigners resident in Finland enjoyed basically the same rights as Finnish citizens, in political, social and cultural matters, but there were some restrictions on their economic activities defined by law, and the right to vote was so far enjoyed only by foreigners who were citizens of the Nordic countries, although legislation was in preparation to extend that right to other foreigners.

19. A second point related to the status of migrant workers and refugees: foreign workers were required to have a work permit, but otherwise enjoyed the same rights as other employees, while refugees were assisted by the Government in respect of work and housing, and courses were provided for them in Finnish and Swedish.

20. The question of the rights of the Samis with respect to land ownership and utilization was dealt with in both periodic reports, and he drew particular attention to paragraphs 12 and 13 of the ninth report (CERD/C/159/Add.1) in that connection. Their educational opportunities in respect of teacher-training were referred to in paragraph 28 of the tenth report (CERD/C/185/Add.1): it was hoped that the number of trainee teachers fluent in Sami would increase.

21. With regard to Finland's diplomatic and other links with South Africa, the country retained a chargé d'affaires in Pretoria, and no changes in its representation were envisaged in the short term.

22. Replying to comments by Mr. Aboul-Nasr and others on paragraph 6 of the ninth periodic report, he said that self-identification was the basic criterion for determining whether a person belonged to a particular minority, as was borne out, for instance, by the provisions of the Indigenous and Tribal Peoples Convention (ILO Convention No. 169, (1989)). In all Nordic countries, the criterion applied to the Samis was furthermore the language. It was in fact sufficient for one of a person's grandparents to have spoken Sami as the first language. With regard to the Romanies, the criteria were not generally defined and most Romanies no longer spoke their mother tongue.

23. Regarding the emigration of Jews from the Soviet Union, Finland's clear position had always been that all Jews from that country should be free to choose their country of destination. On the subject of immigration in general and requests for asylum in particular, both were steadily increasing. The total number of requests for asylum in 1989 had been only 179, but they had since increased in 1990 to 1,200. In reply to the question about the Swedish-speaking population in Finland, he said that Finnish citizens whose mother tongue was Swedish accounted for some 5 to 6 per cent of the total population. Both Swedish and Finnish were national and official languages in Finland.

24. Replying to Mr. Wolfrum's question about Nordic cooperation on Sami affairs, regular meetings were held between senior officials in the Nordic countries to discuss Sami affairs within the framework of the relevant Nordic institutions and with the participation of Sami representative bodies. Cooperation and coordination in that regard were exemplary. On the subject of literacy among the Samis and Romanies, he was unable to provide any specific information. All Sami and Romany children attending school were literate in Finnish, and most of the Sami children also in Sami, but there were undoubtedly some adult Romanies who could not read or write. He assured the Committee that replies to the other questions raised would be included in Finland's next periodic report.

Mr. Ferrero Costa (Vice-chairman) took the Chair.

25. Mr. ABOUL-NASR said that the reply given to his question concerning the statement in paragraph 6 of the ninth periodic report (CERD/C/159/Add.1)that language was the main criterion in determining whether or not a person was Sami suggested that that statement was in fact incorrect, since the representative of Finland now appeared to be saying that self-identification was the criterion.

26. Mr. SHERIFIS, referring to paragraph 61 of the tenth periodic report (CERD/C/185/Add.1), asked whether it was the Ministry of Foreign Affairs which coordinated the inputs of the various other ministries to Finland's periodic reports to the Committee.

27. On the subject of the criteria for the definition of ethnic or racial groups in Finland, it was his understanding, as it was of Mr. Aboul-Nasr, that language was but one of many criteria. That answered his own questions about the Sami community, as well as those he had raised at the 866th meeting regarding the Swedish community.

28. Mr. AARNIO, (Finland) said that, in the case of the Samis, the criterion for a person to identify himself or herself with the Sami community was the Sami language, in the terms set forth in paragraph 6 of the ninth periodic report (CERD/C/159/Add.1).

29. Replying to Mr. Sherifis' question about paragraph 61 of the tenth periodic report, it was naturally the Ministry of Foreign Affairs which coordinated the other ministries' contributions to periodic reports for submission to the Committee.

30. Mr. YUTZIS said that the current discussion again raised the question of identity of an ethnic group in terms of language. Although he knew that his question was a difficult one to answer and would undoubtedly call for fuller study, he would be interested in hearing, by way of an initial, unprepared response, the views of the representative of Finland on the possibility of the Romanies disappearing altogether as a group in view of the continuing decline of their language.

31. Mr. ABOUL-NASR, returning to the question of Sami identity, wished to know whether he understood correctly that persons who were not Sami-speaking and none of whose parents or grandparents were Sami-speaking would not be considered Sami by the Finnish Government, even if they regarded themselves as such and wished to be so regarded. That raised the question of whose opinion should prevail. Was it that of the courts or of society, for example?

32. Mr. RESHETOV, while expressing appreciation of the Finnish reports, said that he ventured to disagree with the representative of Finland on the criteria for belonging to a national minority or ethnic group. He agreed with the definition adopted in Copenhagen by the 35 members of the Conference on Security and Co-operation in Europe, namely, that identification with a particular group was a matter of a person's individual choice. In the discussions under way in his own country in preparation for the next national census, it was understood that the sole criterion for determining whether a person belonged to a particular group was his or her free choice.

33. Mr. AARNIO (Finland), replying to Mr. Yutzis' question about the language of the Romanies, said that the position of that language was extremely weak. The Committee could be assured that the Government of Finland was doing everything in its power to enhance its status. Courses had been organized, including one to train teachers in Romany, and that work would continue. It was the Government's sincere hope that the Romany language could live on in Finland.

34. Concerning the definition of the Sami group, he stressed that the Finnish Government's definition had been formulated in accordance with the wishes of the Samis themselves. Sweden and Norway used the same criterion. In reply to Mr. Aboul-Nasr, he said that, in accordance with the definition drawn up in the Nordic provisions, persons wishing to be Sami could not be regarded as such unless they spoke the language or one of their parents or grandparents had had Sami as his or her mother tongue.

35. The CHAIRMAN thanked the representative of Finland on behalf of the Committee and said that the Committee had concluded its consideration of Finland's ninth and tenth periodic reports (CERD/C/159/Add.1 and CERD/C/185/Add.1).

Mr. Aarnio (Finland) withdrew.

The meeting was suspended at 4.10 p.m. and resumed at 4.35 p.m.

Suggestions and general recommendations under article 9 of the Convention

Mr. Shahi resumed the Chair.

36. Mr. ABOUL-NASR said that the different interpretations by the Committee and the Government of Finland of the criteria for defining an ethnic group, and the apparent unanimity in the Committee that the main criterion should be self-identification as opposed to language, provided a useful opportunity for the Committee to take advantage of the provision in article 9 of the Convention for suggestions and general recommendations to be reported to the United Nations General Assembly together with comments from States parties. That procedure had been used in the past, and he suggested that, without opening a lengthy debate on the subject, a small group of two or three members might be set up to draft a short, tentative text for consideration by the Committee and subsequent submission to the General Assembly and States parties after due discussion of the appropriate procedure.

37. Mr. SHERIFIS endorsed Mr. Aboul-Nasr's proposal. The small working group would be responsible for deciding, subject to the Committee's approval, whether the text would take the form of a suggestion or a recommendation, and to whom it should be addressed. He suggested that Mr. Aboul-Nasr should be the chairman of the working group.

38. Mr. BANTON said that the question of the intended recipients of such suggestions and general recommendations was dealt with in paragraphs 115 to 118 of the study entitled "Committee on the Elimination of Racial Discrimination and the progress made towards the achievement of the objections of the International Convention on the Elimination of All Forms of Racial Discrimination", 1/ now before the Committee. He suggested that the Committee might simply quote the relevant passage from the text on national minorities adopted by the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe and referred to by Mr. Reshetov (865th meeting), and draw it to the attention of States parties.

39. Mr. WOLFRUM said that, while he strongly supported Mr. Aboul-Nasr's suggestion, a more flexible alternative might be for the Committee to discuss the issue in the light of the text adopted in Copenhagen and for the Rapporteur to draft a proposal which would sum up the Committee's views and be endorsed by the Committee as a whole. He was, however, open to suggestions.

40. The CHAIRMAN asked Mr. Banton to identify passages in the study to which he had referred. He took it that the suggestions or recommendations to be discussed concerned the Sami question specifically, since a discussion on a general definition of ethnic groups would require considerable inputs in terms of expertise, studies and the like, and would exceed the resources of the Committee.

41. Mr. ABOUL-NASR said that he had no specific idea in mind, but that the text might take the form of a general recommendation, followed by more detailed suggestions. The matter could be discussed and a text drafted in the light of members' opinions as they emerged from the exchange of views.

42. Mr. BANTON, replying to the Chairman, said that paragraph 118 of the study in question provided that suggestions and general recommendations should be communicated to States parties and reported to the General Assembly.

43. Mr. FOIGHEL said that, while he appreciated the ideas behind the suggestion now being discussed, the Committee should proceed cautiously, since there were many questions of principle involved. The provision that the recommendations should be communicated to all States parties to the Convention was a case in point. Although there seemed to be general agreement in the Committee tha. the criteria for defining the Samis raised difficulties, it would not be proper to single out Finland in the Committee's report. The case of the Samis was an interesting but relatively minor one when seen against the instances of discrimination on racial, ethnic or other grounds in many parts of the world. Should the Committee decide to adopt the proposed procedure, it should report on all countries or on cases of flagrant discrimination; discussions or reports of that kind should not merely be an intellectual exercise, however interesting.

44. Secondly, it must be determined whether unaniminity or majority agreement would be the basis for such a report. He would not wish to be in the minority, as might be the case if the recommendations were directed to a certain country on a certain issue. Another point was that of relevance to the Convention. He raised that point specifically because there were occasions when questions were asked and views exchanged that were of great interest to the Committee but lay outside the framework of the Convention. It remained to be seen whether the proposed discussion warranted a report.

45. Finally, an extremely important question was that of the competence of the Committee, which was not a court of law competent to hand down judgements. The Committee's function was to consider a country's periodic report, discuss it and draw attention to what it felt were important issues on which the Committee was not satisfied. It was then for the Government concerned to take the appropriate action and for other Governments to press the country to bring about changes. He had no objection to amending the Committee's terms of reference but that must be done according to the appropriate procedures.

46. Mr. LAMPTEY said that he fully endorsed the views expressed by Mr. Foighel. If the Committee was to deal with the proposal by Mr. Aboul-Nasr, it should be given time for a thorough examination of the matter.

47. Mr. FERRERO COSTA said that he understood the practical problems involved and thought it necessary for the proposal to be considered in all its aspects.

48. After a discussion in which Mr. ABOUL-NASR and Mr. SHERIFIS took part, the CHAIRMAN suggested that the formal discussion of the proposal should be postponed and that members should hold private consultations.

It was so agreed.

AGENDA ITEM 10

Second Decade to Combat Racism and Racial Discrimination

49. Mr. LAMPTEY recalled that at its thirty-seventh session, 2/ the Committee had considered the revision of its study on the progress made towards the achievement of the objectives of the International Convention on the Elimination of All Forms of Racial Discrimination on the basis of amendments and proposals by two designated members, Mr. Banton and Mr. Yutzis. The study had been published in 1978 as the Committee's contribution to the first World Conference to Combat Racism and Racial Discrimination.

50. The Committee had concluded the first reading of the revised study, and the first draft revision, which took into account the views expressed by members and had been prepared by the Secretariat in consultation with the two designated members, was before the Committee at its current session.

51. The Committee had decided 3/ to celebrate its twentieth year of activities and hold a commemorative session of three weeks' duration in New York, to which all former Chairmen would be invited. The General Assembly in its resolution 44/68 had adopted that recommendation. However, he had been informed later by the Secretariat that the necessary funds for a commemorative session of that duration would not be available because some States parties had not met their financial obligations under the Convention. He had subsequently been requested by the Under-Secretary-General for Human Rights to travel to New York and represent the Committee at the celebrations there, which he had agreed to do. He had seized the occasion to appeal for support for the Committee by States parties and the international community and for ways to be found to ensure that it could function as required by the Convention.

52. Personally, he had always considered that the best solution to the problem of financing the Committee's meetings was the allocation of funds from the regular budget of the United Nations. He recalled that in 1989 he had suggested 4/ to the Under-Secretary-General for Human Rights that the cost of the Committee's meetings might be met from funds made available for the Second Decade to Combat Racism and Racial Discrimination.

53. Noting that the General Assembly had not taken a positive decision concerning the proposal for the allocation of funds from the regular budget, he drew attention to paragraphs 8 - 10 of Commission on Human Rights resolution 1990/25 and, in particular, to paragraph 10 concerning the establishment of a "contingency reserve fund". That formula would avoid the problem of having to obtain money from the regular United Nations budget. He thought that members of the Committee who were also members of their country's delegations to the General Assembly should try to muster support for that formula.

54. The CHAIRMAN said he was sure that he was expressing the views of the Committee in thanking Mr. Lamptey for his able representation of the Committee in New York and for his contribution to its work.

55. Mr. BANTON said he hoped that the review of the Committee's work would still go ahead at some point, even though it had not been possible to carry it out in the Committee's twentieth anniversary year. It had been proposed that the Secretary-General should compile a consolidated volume of national laws designed to combat racism and racial discrimination, which would be submitted to the Committee for its comments (A/44/574, para. 2). Such a document would be vast and complex, and the Committee would have to plan its review carefully. For instance, members should agree on a division of labour, with individuals concentrating on areas of particular interest to them, rather than all members trying to comment on the entire document. Perhaps the Committee could combine that exercise with the proposed review of its own work and working methods and try to draw conclusions for the future.

56. Mr. ABOUL-NASR said that the Committee must consider carefully how it was to divide up the work of reviewing the compilation, and indeed whether it should review the document at all. He also thought that the Committee should not confine itself to endorsing the Commission's proposals for new methods of financing the Committee's activities; it should also explicitly express its regret that it had not been able to participate in the activities of the Second Decade owing to lack of funds.

57. Mr. GARVALOV said that he had attended the meetings of the Third Committee at the forty-fourth session of the General Assembly, when the Committee's financial problems had been discussed. While all members of the Committee on the Elimination of Racial Discrimination were in agreement on what needed to be done, that was not true of the representatives in the Third Committee, and the latter Committee's attempt to secure a consensus during the past two years had merely led to a situation satisfactory to no-one. He had no great hopes of a solution being achieved at the next session of the General Assembly.

58. Another important point was the constant need to encourage all States to ratify the Convention. The number of States parties currently stood at 129, some of which were not States Members of the United Nations, so there were still quite a number of States Members which were not parties. The General Assembly in its resolution 44/52 on the Second Decade to Combat Racism and Racial Discrimination made no mention of the need for universal ratification of the Convention; in fact, the only reference to that matter in the General Assembly documents before the Committee was in the report on the implementation of the Programme of Action for the Second Decade (A/44/595, para. 78).

59. Mr. YUTZIS said that universal ratification of the Convention would not by itself eliminate racial discrimination from the world; States must also display the political will to meet their obligations under the Convention, as the Committee's problems at the present session had shown. In that connection, he found it surprising that a study of the results achieved and the obstacles encountered during the first Decade to Combat Racism and Racial Discrimination and the first half of the Second Decade 5/ should have been prepared by a rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, rather than by a member of the Committee.

60. He supported Mr. Banton's proposal that the Committee should combine a review of the proposed compilation of national laws to combat racism and racial discrimination with a review of its own work. The problems of racism and racial discrimination were likely to become more and more complex, and the Committee must not be complacent about its methods of work. The problem was not one for the Secretary-General or for the financial authorities of the United Nations; it was the responsibility of States parties to show that they had the political will to acquit themselves of their responsibilities. The Committee would need to review its methods of work at some point, and he thought that such an analysis would be one of the best ways for it to contribute to the third Decade to Combat Racism and Racial Discrimination.

61. Mr. ABOUL-NASR asked when the proposed compilation of national laws would be submitted to the Committee.

62. Mr. HOUSHMAND (Representative of the Secretary-General) said that the compilation was due to be completed before the end of the second Decade in 1993. The document was largely based on the information made available to the Committee by States parties, and the study was to be submitted to the Committee for comments before it was published.

63. The CHAIRMAN said that three main points seemed to have emerged from the debate. Mr. Lamptey had suggested that the Committee should endorse the proposal of the Commission on Human Rights for the establishment of a contingency fund. Mr. Banton had suggested the Committee should combine the review of the proposed compilation of national laws with a review of its own work. Finally, Mr. Garvalov had stressed the need for universal ratification of the Convention.

64. Mr. ABOUL-NASR pointed out that the Committee could not endorse resolutions of the Commission on Human Rights and that, in any case, he had some reservations about the proposal. In respect of the proposed compilation of national laws, he believed the Committee should not merely indicate its readiness to review the compilation, but should make some concrete suggestions. He also felt the Committee was not competent to urge States to accede to the Convention; it could, however, ask the General Assembly to do so. Finally, he wished to remind the Committee of his suggestion that it should formally express its regret that it had not been able to participate in the activities of the second Decade owing to lack of funds.

65. Mr. de GOUTTES asked for a number of points to be clarified for the benefit of new members like himself. Firstly, how many States parties were in arrears with their contributions, and by what amount? Secondly, exactly what resources would be used for the proposed contingency fund, and how would it operate? Thirdly, what would be the relationship between the contingency fund and the Trust Fund for the Programme for the Decade for Action to Combat Racism and Racial Discrimination? Fourthly, was the establishment of the contingency fund consistent with the Committee's request that the General Assembly should authorize the temporary financing of the Committee's meetings from the United Nations regular budget? Finally, could the Secretariat remind him exactly why the proposal to fund the Committee's meetings from the regular budget had been refused?

66. Mr. GARVALOV agreed that, strictly speaking, the Committee was not competent to call directly upon States to accede to the Convention. However, it seemed only right that it should call in general terms for the universal ratification of the Convention.

AGENDA ITEM 9

Consideration of copies of petitions, copies of reports and other information relating to Trust and Non-Self-Governing Territories and to all other territories to which General Assembly resolution 1514 (XV) applies, in conformity with article 15 of the Convention

67. The CHAIRMAN said that, in accordance with the Committee's usual practice, working groups were to be set up to consider issues under agenda item 9 and to make recommendations to the Committee. No petitions concerning African Territories had been submitted to the Committee, and the working group on those Territories would not consequently meet at the current session. He suggested that the working group on Atlantic Ocean and Caribbean Territories, including Gibraltar, should consist of Mr. Wolfrum, Mr. Reshetov, Mr. Vidas and Mr. Foighel, with Mr. Yutzis as Convenor; the working group on Pacific and Indian Ocean Territories should consist of Mr. Lechuga Hevia, Mr. Garvalov, Mr. Rhenan Segura and Mr. Song Shuhua, with Mr. Sherifis as Convenor. He suggested that Mrs. Sadiq Ali might act as Chairman of the Convenors.

It was so agreed.

68. The CHAIRMAN said that the working groups faced the same problem as they had during previous sessions, namely, that they had not been provided with copies of petitions and other relevant information. He therefore doubted whether they would be able to reach any substantive conclusions. All the Committee could do was to appeal once again to the General Assembly to provide the necessary information.

The meeting rose at 6.15 p.m.

Notes

1/ United Nations publication, Sales No. E.79.XIV.4.

2/ Official Records of the General Assembly, Forty-forth Session, Supplement No. 18 (A/44/18), para. 462.

3/ Ibid., para. 468.

4/ See, CERD/C/SR.858, para. 14.

5/ E/CN.4/Sub.2/1989/8 and Add.1.

868th meeting

Thursday, 9 August 1990
at 10.10 a.m.

Chairman: Mr. SHAHI

AGENDA ITEM 7

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Ninth and tenth periodic reports of Ecuador (CERD/C/172/Add.4)

At the invitation of the Chairman, Mr. Santos Alvite and Mr. Apunte Franco (Ecuador) took places at the Committee table.

1. Mr. SANTOS ALVITE (Ecuador) said that his country, a genuine melting pot of races and cultures, guaranteed all its citizens free exercise of the civil, political, economic, social and cultural rights set forth in the international instruments in force. In order to ensure full enjoyment of those rights, it was taking all possible steps to overcome underdevelopment and improve the living conditions of the population, with due regard for the environment, despite an acute shortage of resources. In doing so, it was constantly at pains to combat all forms of racial discrimination.

2. The Government had decided to take priority action on three fronts. First, it was striving to improve the lot of children, in particular by waging a battle against hunger and malnutrition and against illiteracy, an area in which great headway had been made. Second, it was committed to improving the status of women. In that connection, the Civil Code had been amended in 1989 in order to place women on an absolutely equal footing with men, for instance, with regard to the position and role of women in marriage. That reform was the culmination of many years of effort. Third, the Government was seeking to encourage the participation and integration of the indigenous population, who accounted for 18.5 per cent of the total population. It had taken steps to mobilize and inform the population, with emphasis on literacy. There were 1,750 bilingual education centres in Ecuador, catering for some 34,000 pupils.

3. The high degree of mobility and the mixed racial origin of the population were undoubtedly conducive to integration and a discouragement to all forms of discrimination. Last but not least, Ecuador, a fervent champion of democracy, could pride itself on having maintained social peace. That was its greatest asset in achieving development in all areas.

4. The CHAIRMAN invited Mr. Yutzis, Rapporteur appointed for the preliminary examination of the reports, to take the floor.

5. Mr. YUTZIS said that Ecuador spared no effort in ensuring respect for human rights and fundamental freedoms within its borders. In particular, the Government was successfully endeavouring to promote education, the status of women and the participation of the indigenous population in the life of the nation.

6. Instructive though it was, Ecuador's report (CERD/C/172/Add.4) did not state whether the Constitution or other legislation contained provisions that were in conformity with article 2, paragraph 1 (d), of the International Convention on the Elimination of All Forms of Racial Discrimination, which was directed against groups or organizations of a racist character. Nothing was said, either, about measures taken in accordance with articles 3 and 4 of the Convention.

7. He had some misgivings about paragraph 5 of the report, where it said that "no kind of racial discrimination whatsoever exists or has existed in this country". That categorical statement was supported by three arguments, namely that no one had ever brought a complaint before the courts for racial discrimination (para. 6), that there was "no concept whatsoever of class superiority based on chromosomes" (para. 7), and that the whole of the population was of mixed racial origin.

8. The first argument was possibly the most valid of the three. But it remained to be seen what remedies were available, whether all individuals without exception knew that they could go to court if need be, and whether there were any psychological or other reasons dissuading them from filing complaints.

9. The second argument was hardly acceptable. Just because there was no "genetic racism" in Ecuador did not mean that there was no racial discrimination. The fact was that racial discrimination could take far more insidious and subtle forms. The third argument - a racially intermingled population - seemed difficult to reconcile with the fact that Ecuador singled out, though according to what criteria was not known, several indigenous ethnic groups which accounted for a substantial proportion of its inhabitants.

10. In any event, "social marginalization" did exist in Latin America and could not be ignored. Wealth was not evenly distributed among all segments of the population and the colour of a person's skin and racial origin played a decisive part in that situation. That was the sombre legacy of colonialism.

11. He quoted a number of specific examples showing that there were indeed tensions in Ecuadorian society.

12. Back in 1923, an oil company had been set up on land inhabited by indigenous peoples; at the same time, there had been conflicts between those peoples and settlers attracted there by the rubber trade. In 1956, Huaorani Indians had killed five American missionaries who were said to have been connected with an organization called the "Instituto lingüístico de verano". In 1979, the Huaoranis had been afflicted by a poliomyelitis epidemic and had been given no assistance, apparently for fear that outsiders would be unwelcome. The oil companies, which continued to use the same method even today, established themselves on lands inhabited by the indigenous peoples by the devious method of encouraging settlers to the area and then using those settlements as a bridgehead to expand their own field of operations.

13. In a document submitted on 1 August 1990 by the representative of the Confederation of Indigenous Nationalities of Ecuador to a United Nations body, it was requested that the indigenous peoples of Ecuador and their right to land should be recognized, that the State should be declared plurinational by an amendment to the Constitution, that a law on indigenous nationalities should be adopted and that politico-religious organizations like the "Instituto lingüístico de verano", which was suspected of encouraging the establishment of multinational corporations in the country and of defending interests alien to those of Ecuador, should be expelled.

14. He did not consider himself competent to judge whether or not those allegations were true, but would stress how difficult they made it to accept the assertion in paragraph 5 of the report that there was no discrimination in Ecuador.

15. On another point, he would like the demographic data concerning Ecuador to be updated. He also wished to know how many property deeds had been issued to members of the indigenous population and whether the indigenous population was actually succeeding in going over from a subsistence economy to a production economy without losing their identity. Information was also needed on the methods employed by the oil companies and the way in which they used settlers to establish themselves in certain areas, and on protection of the environment, with which the indigenous peoples lived in close harmony.

16. In conclusion, he thanked the representative of Ecuador for the introduction of the report, and commended the Ecuadorian Government for its spirit of dialogue.

17. Mr. VIDAS also expressed appreciation for the spirit of co-operation always shown by the Ecuadorian Government. He too was interested in the questions asked by Mr. Yutzis and believed that the Ecuadorian Government should be urged to continue its policy of encouragement to indigenous ethnic groups and their various forms of cultural expression.

18. Mr. RHENAN SEGURA said that he wished first to draw attention to the inconvenience the Secretariat had caused by notifying him at the last minute that he would not be entrusted with the task of commenting on Ecuador's report, whereas the Centre for Human Rights had officially appointed him to do so. He urged the Secretariat to make sure that such a mistake did not occur again.

19. It was difficult to accept the assertion that there was no racial discrimination, especially when it was made by a country like Ecuador, where there was a very substantial indigenous population, where discrimination had been a matter of course during the colonial era and where subtle forms of distinction between persons or groups were drawn, consciously or unconsciously, in connection with social stratification. The Committee should therefore have accurate information on the composition of the Ecuadorian population, on minority groups, and on government measures to protect their heritage.

20. On the subject of education, it could be seen that paragraph 9 of the report dealt mainly with higher education. Further information would be welcome. What was the literacy rate among the indigenous groups? Was literacy work among those groups conducted in Spanish or in their own

language? What proportion of indigenous inhabitants entered higher education? What was the budget of the National Directorate of Indigenous Affairs, how were its main officials selected and were the indigenous inhabitants represented?

21. As to agrarian reform, what percentage of the national territory was in the hands of the indigenous population, and what had been the results of the reform launched in 1973? Would it also be possible to have details on the problems encountered by the Government in eastern Ecuador in regard to lands belonging to indigenous peoples?

22. In its report of the previous year, the ILO Committee of Experts on the Application of Conventions and Recommendations had noted that Ecuador had not been complying with its obligations under the Freedom of Association and Protection of the Right to Organise Convention, ILO Convention No. 87 (1948). In that connection, he asked whether it was possible for indigenous groups to establish their own organizations, whether they had equal access to jobs, and whether - and in what proportion - they were represented in Parliament and in the other higher national authorities.

23. Again, had the Ecuadorian Government taken "immediate and effective measures", in accordance with article 7 of the Convention, in the fields of teaching, education, culture and information, to combat prejudice leading to racial discrimination and intolerance. In particular, were indigenous groups informed of the provisions of international instruments for the protection of human rights and, if so, in what way?

24. Lastly, he pointed out that Ecuador, which had in 1989 celebrated the tenth anniversary of its return to democracy was one of the few countries in the world to have made the declaration provided for in paragraph 1 of article 14 of the Convention.

25. Mr. SONG Shuhua thanked the Ecuadorian Government for its fruitful dialogue with the Committee, but regretted that the guidelines for the presentation of the report (CERD/C/172/Add.4) had not really been followed.

26. On the subject of equality between men and women, he asked when the Act referred to in paragraph 20 of the report would be put into effect and whether other measures were planned to deal with the problems arising from traditional prejudices.

27. He commended the Government for setting aside 30 per cent of the nation's budget for education, and would like to have more details about the progress in education, including the literacy rates, among the indigenous population.

28. Had the administrative and legislative measures mentioned in paragraph 28 of the report yielded results in regard to participation by the indigenous population in elections and also in reducing illiteracy?

29. In conclusion, he would stress the important role played of the law in preventing acts of discrimination.

30. Mr. WOLFRUM said that he would like information on the distribution of national income among ethnic groups, the measures taken to combat unemployment and narrow the income gap, the health services available to the various ethnic groups, the efforts by the Government to preserve the specific cultural identity of minority groups, the languages that could be used before the courts or in the administration, the nature of the provisions in the Criminal Code referred to in paragraph 6 of the report (CERD/C/172/Add.4), the extent of participation by indigenous peoples in elections, their representation in Parliament and in the senior civil service, and the functioning, objectives and activities of the bodies mentioned in paragraph 26 of the report.

31. Mr. de GOUTTES said it was gratifying to see that Ecuador had made the declaration provided for in article 14, paragraph 1, of the Convention and that the ninth and tenth periodic reports (CERD/C/172/Add.4), consolidated in a single document, amply described the country's socio-economic situation.

32. Paragraph 3, stated that any person living in Ecuador could directly invoke the Convention. Did that mean that the Convention was directly applicable under domestic law? Did the fact that the Convention had never been invoked before the courts mean that there was no discrimination, or merely that people did not know enough about it? Had the situation changed since the drafting of the tenth periodic report?

33. Mr. ABOUL-NASR said he considered it important to know what proportion of non-whites were represented in Parliament and in the Government, since they constituted a huge segment of the population.

34. Mr. SHERIFIS pointed out first of all that Ecuador, whose cooperation with the Committee had always been exemplary, had ratified all the international conventions on human rights, and was one of the few countries to have made the declaration under article 14 of the Convention. It was regrettable however, that the document under consideration had not been drawn up in accordance with the Committee's guidelines.

35. In Ecuador's eighth periodic report 1/, it had been stated that Indians accounted for 18.5 per cent of the population, whereas the figure had been given as 50 per cent in previous reports. What exactly was the situation? What was the reason for that discrepancy?

36. The Ecuadorian Government was to be commended for the efforts it had made to improve the lot of the indigenous peoples and the status of women. There was no doubt that the agrarian reform should be continued, since it was consistent with the intention behind article 5 of the Convention. It was interesting to note that the budget of the Ministry of Education accounted for 30 per cent of the national budget (CERD/C/172/Add.4, para. 9), and he asked whether it was true that half of the Indians did not speak Spanish. Lastly, since previous reports had indicated that certain Indian tribes like the Colorados were dying out, it would be interesting to have updated information on the subject.

37. Mr. GARVALOV said first of all that he had noted the statement in paragraph 3 of the report (CERD/C/172/Add.4) that every inhabitant of the country, "whether an Ecuadorian or a foreigner", enjoyed the rights enunciated

in the international instruments to which Ecuador was a party. That was a highly positive factor, which deserved to be emphasized, and it was to be hoped that the Ecuadorian Government was in a position to ensure the application of that principle in all cases. He also welcomed the Ecuadorian Government's excellent collaboration with the Committee.

38. Paragraph 5 said that there was no kind of racial discrimination whatsoever in Ecuador. The experts on the Committee knew only too well that that was not true of any country and, even though Ecuador might be "a racial melting pot" (para. 7), specific and convincing evidence must be adduced to support that assertion.

39. It was deplorable that in drawing up their periodic reports, States parties - and in that regard Ecuador was no exception - failed to make a clear distinction between the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenants on Human Rights, especially the International Covenant on Economic, Social and Cultural Rights. Like many other States parties, Ecuador tended to dwell upon the constitutional and legislative provisions conducive to combating discrimination, without giving much information on the application of those provisions, whereas the Committee was primarily interested in practical measures.

40. Mr. SANTOS ALVITE (Ecuador) thanked the Committee for the great interest it had shown in his country. By way of general comment in response to the questions raised by Mr. Yutzis, he said that the Ecuadorian Government's main objective was to ensure integrated development, in other words not only economic but also social development. That objective was all the more difficult to attain because, as was well known, Ecuador was heavily in debt ($11 billion, for a population of 10 million). He would point out in that regard that Ecuador had been one of the first countries in Latin America to plan its development by establishing a National Economic and Social Planning Council, as long ago as 1954.

41. The Indian element had had a considerable influence on Ecuadorian culture, as could be seen from the powerful works of a writer like Jorge Icaza or the painter Oswaldo Guatasamin, which were known the world over. Moreover, the agrarian reform launched in 1964 and internal migration had contributed in no small way to the intermingling of the population. Population density was the highest in South America and migratory flows the most intense in the third world; the integration of small, isolated population groups was therefore a slow - and, as had been pointed out - not always a smooth process. However, the Ecuadorian Government, mindful that colonialism and neo-colonialism had left a heritage which was one of the causes of the country's underdevelopment, was careful not to repeat the errors of the past, one of which was paternalism. That was why it had made the strengthening of local autonomy one of its priorities and why it was endeavouring, through the activities of the National Directorate of Indigenous Affairs, to help the indigenous peoples to develop within their own environment. With the census scheduled for 1990, data on the various ethnic groups would very probably be brought up to date, even though the growing number of persons of mixed race made the task difficult. In any

event, he wished to confirm, in reply to Mr. Sherifis' question, that the Indian population accounted for 18.5 per cent of the population as a whole, and not 50 per cent.

42. The purpose of the Ecuadorian Government's literacy work was simply to assist the indigenous peoples in their development. In that connection, he cited the work of Mgr. Proaño, who had mobilized thousands of people in the struggle against illiteracy. Only some 10 per cent of the population was still illiterate. He also pointed out that educational campaigns were more appropriate than sterilization campaigns as a way of bringing down the population growth rate, since they were far more mindful of the rights of the individual. They were also designed to improve the social status of women, and hence to combat discrimination. The measures announced in paragraph 19 of the report (CERD/C/172/Add.4) had indeed been taken, with the adoption by the Ecuadorian Congress, on 18 August 1989, of 81 legislative instruments guaranteeing absolute equality between spouses.

43. Again the President of Ecuador himself had recently concluded one of his speeches in the Quechua language - something which could be said to herald a new era of communication. A great deal of literature on human rights, including material produced by the National Human Rights Association, was translated into Quechua, thus acquainting the Quechuas with their rights and obligations and enabling them to take a more active part in the life of the country. The Government had endeavoured to establish a very wide-ranging dialogue with the population in order to reach agreement on fundamental issues like land ownership, the "minifundios" (smallholdings of insufficient size) and water-use regulations, especially for irrigation. In Ecuador, political decisions must be the result of consensus among all the nationalities represented in the country. The challenge that lay ahead was indeed national integration.

44. Reverting to the question of participation by the indigenous population in public life, he said that all citizens, of whatever origin, had access to the most senior positions in the State. Several politicians of indigenous origin had already made their mark on his country's public life. Women, too, were increasingly rising to positions of responsibility. In conclusion, he appreciated the interest shown by the members of the Committee in the situation in Ecuador. He hoped to be able to provide them with additional information in forthcoming reports and reiterated his wish to see the emergence of an international code of development ethics.

45. Mr. YUTZIS thanked Mr. Santos Alvite for the additional information he had provided. However, he wished to stress that the persistence of certain tensions in Ecuador did not enable him, as a member of the Committee, to accept that article 19, paragraph 5, of the present Constitution, as quoted in paragraph 4 of the report (CERD/C/172/Add.4), was in conformity with the Convention. If the wording had not been amended before Ecuador's next report was submitted, the Committee would be compelled once again to draw the government representative's attention to that point.

46. The CHAIRMAN said he, too, hoped that Ecuador's next reports would take account of the questions raised by the Committee and that they would contain precise demographic data. He said that the Committee had concluded its consideration of the ninth and tenth periodic reports of Ecuador (CERD/C/172/Add.4).

Mr. Santos Alvite and Mr. Apunte Franco (Ecuador) withdrew.

Third and fourth periodic reports of China (CERD/C/153/Add.2 and CERD/C/179/Add.1)

At the invitation of the Chairman, Mr. Fan Guoxiang and Mr. Wu Shiming (China) took places at the Committee table.

47. Mr. FAN Guoxiang (China) explained that each of the reports of China (CERD/C/153/Add.2 and CERD/C/179/Add.1) was composed of six parts. The first, on the implementation of article 2 of the Convention, provided concrete information demonstrating that the Chinese Government had always upheld the principle of the equality of all nationalities. Among other things, the Government had adopted a series of specific measures, including financial and technological measures, to encourage the economic and cultural development of national minorities. In 1988 and 1989, economic growth in the regions concerned had been the same as in the rest of the country. The second part of the report dealt with the implementation of article 3 of the Convention. Not only did the Chinese Government promote equality among peoples of different nationalities within its borders, but in international affairs as well, it advocated equality and cooperation among peoples, and it had always opposed policies of racial discrimination and apartheid. It had strictly abided by United Nations resolutions on sanctions against South Africa and maintained no official relations with that country. The third part of the report dealt with the implementation of article 4 of the Convention. The Chinese Government prohibited any act that might lead to racial discrimination. Any incident or event that might constitute an insult to a national minority was punishable by law. At the same time, the Chinese Government was working towards eliminating vestiges of the past which might be humiliating to national minorities and contribute to racial discrimination. The fourth part of the report covered the implementation of article 5 of the Convention. The principle of equality among all the nationalities of the People's Republic of China, which was embodied in the Constitution, had been put into practice in the political and social life of the country. That principle had always served as a guideline for formulating legislation, administrative decrees and regulations. The fifth part of the report dealt with the implementation of article 6 of the Convention. China guaranteed to citizens of all nationalities enjoyment of the rights and freedoms provided for by law. To that effect, the Government had sought in recent years to perfect the country's legal system by promulgating, for instance, the law known as the General Civil Law of the People's Republic of China and the Administrative Procedural Law. The sixth part of the report concerned the implementation of article 7 of the Convention. The Chinese Government organized educational activities to disseminate the principles of equality, solidarity and mutual assistance among

the various nationalities. The provisions of the Convention were therefore clearly reflected in the functioning of the legislative, judicial and administrative machinery of the country and, generally speaking, the Chinese Government had achieved positive results in eliminating racial discrimination.

48. He also wished to provide the Committee with some additional information on the implementation of the Convention. The Chinese Government had always implemented a consistent policy towards national minorities. As Premier Li Peng had recently stated, Governments must ensure equality and unity among all nationalities and respect their freedom of religious belief, their traditions and customs, while actively developing the economy and culture of all the national autonomous regions so as to promote the common prosperity of all nationalities. In the same address, he had dwelt on the need to safeguard the unification of the motherland and unity among all nationalities, and had invited opposition to any attempt to divide the nation. While continuing its policy of reform and opening up to the outside world, the Chinese Government had adopted economic measures for the benefit of the various regions. For example, it had encouraged some border regions to conduct trade with neighbouring countries. Some regions with a substantial minority population had been able to continue to develop despite prevailing difficulties. In 1989, the gross agricultural and industrial product of the autonomous regions had increased by 7.6 per cent. The State had also made significant efforts to help those national minorities that were still too poor to ensure their own subsistence to emerge from poverty. In spite of its financial difficulties, the Government had set aside RMB 55 million to establish a fund for projects of subsistence for national minorities. Since 1989, the central Government had approved the establishment of nine national autonomous counties, thereby bringing the total number of national autonomous areas up to 159. In 1990, it had continued its efforts to promote education, culture, science and health for national minorities and had recently earmarked a further RMB 20 million for education. A large number of books and other materials had been published in their languages, and two art troupes of minority nationalities had toured various parts of the world to make their art and culture more widely known. In city planning as well, the national traditions and local characteristics of the autonomous regions were preserved. The State also protected the customs and habits of national minorities.

49. The Chinese Government had also taken measures to safeguard unity in a wider context by encouraging mutual help and mutual respect among citizens in the multinational regions and unity among the various nationalities in those regions.

50. In the international community, the Chinese Government was continuing its policy of opposing racial discrimination and segregation.

51. China would continue to fulfil the obligations set forth in the Convention and work unremittingly for the dignity of mankind, the elimination of all forms of racial discrimination and the advent of a human society free of all oppression and discrimination among nations.

52. The CHAIRMAN suggested that consideration of the report of China should be continued at the Committee's next meeting.

It was so decided.

Mr. Fan Guoxiang and Mr. Wu Shiming (China) withdrew.

Organization of work (continued)*

53. THE CHAIRMAN said that the Permanent Mission of Iraq had just asked the Committee to defer consideration of its report to a later date.

54. After a brief exchange of views, he announced that a new date would be proposed to the Permanent Mission of Iraq.

55. Mr. WOLFRUM proposed that any free periods in the Committee's timetable should be set aside for the discussion of general recommendations.

The meeting rose at 1 p.m.

Notes

* Resumed from the 865th meeting.

1/ CERD/C/118/Add.4.

869th meeting

Thursday, 9 August 1990
at 3.10 p.m.

Chairman: Mr. SHAHI

Organization of work (continued)

1. The CHAIRMAN said the Government of Iraq had requested that consideration of its ninth and tenth periodic reports (CERD/C/159/Add.2 and CERD/C/185/Add.2) should be postponed until the Committee's next session. He suggested that the Committee might like to consider the request and take a decision later.

It was so agreed.

AGENDA ITEM 7

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Third and fourth periodic reports of China (CERD/C/153/Add.2 and CERD/C/179/Add.1) (continued)

At the invitation of the Chairman, Mr. Fan Guoxiang (China) took a place at the Committee table.

2. Mr. FERRERO COSTA, rapporteur appointed for the preliminary examination of the third and fourth periodic reports (CERD/C/153/Add.2 and CERD/C/179/Add.1) of China, said that the reports provided valuable new information about the status of the various nationalities in China, and particularly about the legislation which affected minority groups, the Self-Government Laws of Nationality Regions enacted in 1984. The reports were consistent with the Committee's guidelines and had been submitted in good time.

3. He wished to begin with questions based on specific articles of the Convention, and then go on to address the subject of Tibet. With regard to article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination, information submitted by the Chinese Government indicated that the country's population consisted of the Han Chinese majority and 55 other ethnic groups; those groups amounted to 67,230,000 people, or 6.7 per cent of the population (1988 figures). The reports stated that all ethnic groups were considered equal and that special administrative and legislative measures had been taken to promote the interests of minority groups. There were 61 autonomous areas in China, which drew up their own regulations for self-government and took measures to implement them.

4. He would like to ask the Chinese representative for the following information in respect of article 2 of the Convention. Firstly, he would like to see statistics showing the relative size of the various ethnic groups, including the Han Chinese majority, both at present and in the past.

Secondly, he would like information about the measures taken by the Government to ensure the adequate development and protection of minority groups, or at least the principal groups, in accordance with article 2, paragraph 2, of the Convention. What measures had the Government taken to amend it own policies in accordance with article 2, paragraph 1 (c)? Thirdly, he hoped that, in the next periodic report, the Government would list the most important laws and provisions adopted by each autonomous area as well as the measures taken to implement them. Fourthly, he asked about the criteria for the formation of the autonomous areas: did every ethnic group have its own area, or could a group be dispersed among several areas? Fifthly, who set up the autonomous areas, and under what procedure?

5. Sixthly, to what extent did minority groups participate effectively in the running of the autonomous areas? The Government had stated that the autonomous areas were entitled to enact regulations of their own, but, according to paragraph 41 of the third periodic report (CERD/C/153/Add.2) those regulations seemed to be subject to the approval of the central Government. However, a non-governmental organization, the International League of Human Rights, had maintained that none of the Communist Party secretaries, military commanders or political commissars of the five principal autonomous areas were of the local nationality. The organization alleged that one of the major complaints voiced by local minorities was that they had little say in decisions on the economic development of their areas, or on other fundamental matters. He would welcome comments from the Chinese representative on that point.

6. Both reports also referred to the measures taken to promote the economic development of the autonomous areas. It would be useful to have statistics comparing the assistance provided to each of the main autonomous areas and the principal minority groups, as well as the most economically depressed areas. That information would enable the Committee to decide how much the lives of ethnic minority groups had improved in recent years and whether, in particular, the economic aid given to the autonomous areas benefited the Han Chinese majority or other, more developed areas of the country at the expense of the minority groups themselves. It was essential to know whether the economic measures taken were realistic, appropriate to the needs of the autonomous areas and favourable to regional autonomy.

7. He would also like to ask the representative of China what his Government had done to implement article 2, paragraph 1 (e), of the Convention, concerning measures to encourage integrationist multi-racial organizations and other means of eliminating barriers between races.

8. In respect of article 4 of the Convention, the measures listed in paragraphs 32-37 of the third periodic report (CERD/C/153/Add.2) and paragraphs 48-50 of the fourth periodic report (CERD/C/179/Add.1) did not seem adequate. For instance, the 1987 decision by the Standing Committee of the Sixth National People's Congress, mentioned in paragraph 37 of the third report, that China should henceforth exercise criminal jurisdiction over crimes laid down in the international treaties to which it was a party was not sufficient to fulfil the provisions of article 4 (a) of the Convention; States parties must enact special legislation, or extend their penal code, in order specifically to prohibit the dissemination of doctrines based on racial

superiority and incitement to racial discrimination. He asked the representative of China to give details of the members of the State Nationality Affairs Commission referred to in paragraph 36 of the third report.

9. In respect of article 5 of the Convention, details were given in paragraphs 38-81 of the third report and in paragraphs 51-61 of the fourth report of the legal and administrative measures taken to guarantee the civil, political, economic, social and cultural rights of minority groups. He hoped that the next periodic report would give more details of how successful those measures had been in practice. He asked the representative of China to provide as much information as possible about the current standard of living of the principal minority groups compared with that of the Han Chinese, including statistics relating to income, employment, education, health and access to public services. Separate statistics should be given for each group.

10. In respect of article 6 of the Convention, he would like to know what legal redress and compensation were available in practice to persons who had suffered racial discrimination.

11. He now wished to turn to the subject of Tibet. The Chinese Government had stated that rioting in Lhasa, the capital of the Autonomous Region of Tibet, had been due not to nationalism or religious issues, but to separatist influences. However, information received from various non-governmental organizations indicated that the Chinese Government was guilty of racial discrimination in Tibet. For instance, a paper 1/ submitted to the Commission on Human Rights at its forty-sixth session by the Minority Rights Group had stated that the large-scale movement of Chinese settlers to Tibet was a deliberate policy of the Government. According to the Minority Rights Group, before 1949 there had been between 200,000 and 300,000 ethnic Chinese living on the Tibetan side of the border with China; the number of Chinese in that area in 1990 had been 3.5 million according to official government statistics, and over 6 million according to Tibetan sources. Other figures put the proportion of ethnic Chinese to Tibetans at 3 to 1, with two thirds of the Chinese population being permanently settled in Tibet.

12. The large influx of Han Chinese settlers had affected the life and culture of the Tibetans and was rapidly reducing them to an insignificant and second-class minority in their own country. He asked the representative of China to give details of the present population of Tibet, indicating the number of Tibetans and the number of temporary and permanent Chinese residents. How had those figures changed over recent years? What were the corresponding figures for other autonomous areas where Tibetans lived? What was the Government doing to improve the situation of Tibetans vis-à-vis that of Han Chinese in the Autonomous Region of Tibet and other autonomous areas where Tibetans lived?

13. He would also like more details of the benefits gained by the central Government from the exploitation of natural resources in Tibet. The Government had said in paragraph 17 of the fourth report (CERD/C/179/Add.1) that state aid to Tibet had amounted to 15.97 billion yuan renminbi between the early 1950s and 1988. However, according to the Tibet Information Network and Radio Lhasa, in the same period the central Government had derived 200 billion yuan renminbi from timber and 80 billion yuan renminbi from the

sale of works of art and religious artefacts abroad, as well as hard currency earned from tourism. Moreover, the central Government had allegedly earned 28 million yuan renminbi from the mining of mineral deposits in the Ngari region of Tibet in 1987 alone. Even at the most conservative estimate, therefore, the central Government seemed to have earned at least 10 times as much from Tibet as it had granted the region in State aid. He would welcome any comments from the representative of China on that point.

14. The modalities of racial discrimination as practised against Tibetans in the Autonomous Region of Tibet included restrictions on the freedom of movement provided for in article 5 (d) (i) of the Convention. According to information received from the Minority Rights Group, such restrictions had existed long before the imposition of martial law in 1989, but had not always been strictly applied. Ordinary Tibetans who were not residents of Lhasa could not visit the capital without obtaining passes from three different local authorities and a permit from the city authorities, for which they were required to pay an exorbitant fee. Tibetan pilgrims visiting Lhasa were given a temporary registration permit valid for 15 days, whereas all Chinese received a permit valid for up to three years. Tibetans not resident in Lhasa found it difficult to obtain ration cards, which were issued automatically to Chinese immigrants.

15. With regard to the freedom of thought, conscience and religion provided for in article 5 (d) (vii), the same source claimed that Tibetan Buddhist monks had been subjected to new rules and regulations which were often totally at variance with their ancient traditions and precluded serious study and meditation. Novices in monasteries were selected according to secular rather than religious criteria, and monks were subjected to additional travel restrictions.

16. Peaceful demonstrations, which were a civil right within the scope of article 5 (d) (viii), had been repressed with growing brutality since 1987, with numerous casualties.

17. Tibetans were also deprived of their economic, social and cultural rights under article 5 (e). They complained of massive unemployment since the arrival of Chinese settlers in 1983, and the situation had worsened dramatically since the introduction of martial law. Acute discrimination prevailed in the fields of housing and public health. As far as education was concerned, paragraph 9 of the statement 2/ submitted to the Commission on Human Rights by the Minority Rights Group maintained that there was a marked difference in the quality of education provided to Chinese and to Tibetan children, and official statistics put the literacy rate among Tibetans at 25 per cent, compared to 77 per cent for Chinese as a whole.

18. In conclusion, he said that his statement did not give an exhaustive account of the discrimination practised against Tibetans in respect of the civil rights covered by article 5, and that he would welcome corrections and explanations from the Chinese representative with regard to the points he had raised.

19. Mrs. SADIQ ALI said that her remarks should not be construed as intending any interference in Chinese internal affairs: their purpose was to promote a genuine dialogue, with the hope of achieving a better understanding of the basic human rights situation of minorities and ensuring their full enjoyment of the guarantees afforded by the Convention.

20. Turning to the fourth periodic report (CERD/C/179/Add.1), she asked for further information on the minority poverty areas to which reference was made in paragraphs 11-13. What were those areas, and which agencies were assisting them to develop and exploit their geological resources? What was the ratio of employment of the national minorities in the projects to improve living conditions in those areas? It would be useful to have separate statistics for each of the minority provinces with regard to universal elementary education and public health.

21. She would welcome information on the way in which the associations referred to in paragraph 55 for the protection of the legitimate rights of social groups were constituted, and on those responsible for administering those institutions. Noting the regulations aimed at reducing illiteracy quoted in paragraph 59, she asked what the percentage of illiteracy was in the minority areas. She also wondered what was meant by the term "higher self-education examinations" in the following paragraph.

22. The information in paragraph 62 of the fourth report did not indicate whether there had been any proceedings in people's courts involving administrative restriction of freedom of movement, enforced closure, detention and freezing of assets and administrative violations of personal or property rights. Had any cases been heard under article 68 of the Law of Administrative Proceedings referred to in paragraph 64?

23. The criteria for the exclusion from the Autonomous Region of Tibet of areas which were also inhabited by ethnic Tibetans were unclear, and Tibetans had complained that ethnic Hans were being settled not only in the Autonomous Region but also in those areas. If the justification for that policy, which violated the Convention, was the alleged backwardness of Tibet's indigenous population, what were the causes of that backwardness? It seemed that, on the Tibetan plateau, the Tibetan population and the Chinese immigrants were evolving as two distinct and unequal communities. Chinese migrants were to be seen in urban centres, while Tibetans seeking employment were being denied freedom of movement. At the same time, the Han settlers were reportedly unable to return to the regions they had come from.

24. Tibetans, in whose lives religion played an important part, were also restricted in their freedom to practise it, inasmuch as they found themselves isolated from the power structure if they did so.

25. Official statistics gave the literacy rate among Tibetans as 25 per cent, as against the overall rate for China of 77 per cent. She asked what was being done to improve the literacy rate of the Tibetan population. It would also be informative to have comparative figures on the provision of housing for the Tibetans and the ethnic Chinese migrants, and details regarding medical care in the rural areas where many Tibetans lived.

26. China's Code of Criminal Procedure proscribed arbitrary arrest or detention, but there was evidence that most of the persons detained as a result of the demonstrations in Lhasa had been held without charge for periods varying from days to months, and that their relatives had been denied visiting rights. The Code also specifically prohibited the use of torture, but it seemed to have been widely practised against the detained demonstrators. Detainees should be tried in court, or released if no charges could be brought.

27. Under article 7 of the Convention, State's parties undertook to combat prejudices which led to racial discrimination and to promote understanding among racial and ethnic groups. However, in the Chinese media and official statements, Tibetans were generally portrayed as "hooligans", "thieves" or "looters".

28. There were indications that minorities of Islamic believers in China had remained isolated from the Han population, and that they lived largely separate lives. In all those areas, the Han population had increased appreciably, thus aggravating the traditionally rebellious instinct of those ethnic minorities which felt that they had been submerged as a result of large-scale Han colonization. Responsibility for recent disturbances in one province had been officially ascribed to Islamic fundamentalists, and severe restrictions had been imposed on the Muslim minority as a result. What were the causes of those clashes, and what action was being taken to return the situation to normal? She also wished to know why the authorities had not opened the Kunjerak pass on the Karakon highway for tourist traffic that year.

29. The segregation with respect to housing, education, employment and health care to which the Muslim population was subject violated article 3 of the Convention, under which States parties undertook to prevent, prohibit and eradicate all racially segregationist practices in territories under their jurisdiction.

30. In connection with the right to freedom of religion, she asked whether Muslims in China were entitled to make the pilgrimage to Mecca, and if so, what arrangements were made for them to do so.

31. Under article 5 (d) (ii) of the Convention, everyone had the right to leave any country, including his own, and to return to his country. She asked what prospects the thousands of Muslims displaced in the early 1960s from China to the Muslim republics of the Soviet Union had of returning to their own homelands to visit relatives.

32. In view of China's officially proclaimed policy of "one country, two systems", of accepting diversity within its own borders and its commitment to allow radically different systems to exist such as in the free economic zone along the coast, in Hong Kong, Macao and Taiwan, she asked why it could not, in cooperation with the Dalai Lama, who had accepted China's suzerainty and control over foreign policy, defence, currency and transport, grant autonomy to Tibet, particularly in matters of religion and culture.

33. She asked what China's policy was towards refugees and displaced persons, in view of the fact that more than 200,000 people from Viet Nam and Laos had resettled in China. There had been reports that the Government was formally repatriating persons of any nationality who were seeking refugee status.

34. In conclusion, she asked whether the aim of the nation-wide identity card system was to control unauthorized migration to the special economic zones, and whether it did not have the effect of restricting labour mobility and freedom of movement.

35. Mr. RHENAN SEGURA said that he would welcome some clarification of the allegation that African students in China had been the target of racist attacks. Furthermore, was it true, as a document circulated by the International League of Human Rights claimed, that between 1970 and 1989 religious artefacts worth millions of dollars had been illegally exported from Tibet, thus depriving the Tibetan people of an important part of its cultural heritage?

36. In view of the fact that as a result of Chinese military occupation, Tibet could be said to have virtually "disappeared" as an entity in terms of its international status, he wondered in what respect it could be regarded as autonomous. Did the Chinese authorities see the Tibetans as constituting a minority within the State of China as a whole?

37. Mr. ABOUL-NASR, speaking on a point of order, said that the Convention dealt with all forms of racial discrimination, and not with political questions arising from invasion or annexation. That restriction might be irksome, but the Committee must keep its deliberations within the terms of its mandate.

38. A further point was that references were being made in connection with the Chinese report to documents emanating from non-governmental organizations and other, unofficial, sources. While some members of the Committee were in favour of using materials from all sources available to them, the Committee had yet to decide whether such sources were admissible. He suggested that a closed meeting be held to decide the issue.

39. The CHAIRMAN said that the question of the political status of Tibet was one which should be addressed in other United Nations forums, but article 5 of the Convention offered ample scope for discussion of the Chinese reports.

40. He agreed with the previous speaker that since the question of admissible sources, could not be instantly resolved, it should be dealt with at a closed meeting.

41. Mr. RHENAN SEGURA said that Mr. Aboul-Nasr had made several references in earlier meetings, during the consideration of periodic reports, to the controversy surrounding the publication of Salman Rushdie's novel, The Satanic Verses. Although he had not agreed with the opinions voiced by Mr. Aboul-Nasr, and regarded them as being of doubtful relevance, he had refrained from interrupting him on the ground that all members of the Committee were entitled to express their views freely.

42. It would be appropriate to discuss the question of sources at a closed meeting, but he wished to point out that a decision that the Committee should confine itself to official sources would have far-reaching implications, since information from non-governmental organizations was often of great value in the discussion of human rights issues.

43. Mr. WOLFRUM said that, in view of the thorough analysis made by previous speakers, he would confine his statement to four questions, three of them relating to article 5 of the Convention. On the subject of the composition of the population, especially of Tibet, he asked the representative of China to explain whether his Government encouraged immigration, for example, by means of incentives. Some measures, while not directly discriminatory, might have a discriminatory effect if, as a result of such immigration, certain privileges, for instance with regard to place of residence, housing or wages, were accorded to Han immigrants to Tibet. If that were the case, he drew attention to the provisions of article 5 (d) (i).

44. With regard to family planning, he understood from the reports that the rules on birth control applied equally throughout the country, regardless of the minority or majority status of the various groups. He asked for confirmation that there was no distinction between the various ethnic groups in regard to permission to marry and treatment of children. If that were the case, could the Chinese authorities accept the idea that small minority groups would be more seriously affected, and even endangered, by birth control, and that some of those groups should be treated separately?

45. He welcomed the new provisions, particularly the new Law on Administrative Proceedings, reported in paragraphs 51 and 52 of the fourth periodic report (CERD/C/179/Add.1) on the right to use local languages in administrative proceedings and courts. They were, however, contradicted to some extent by the statement in paragraph 58 of the same report that kindergartens "may" use the local minority language, which suggested that such languages were merely optional in relation to the dominant language. His impression was that article 8 of the new Law referred to in paragraph 52 would have little effect. He also requested further information on the teaching of languages in schools and higher educational establishments throughout China and the autonomous regions. If Mandarin were the main language of instruction, the minority languages would disappear.

46. In connection with freedom of belief, it was reported that temples had been re-opened in Tibet, and he wished to know whether the economic basis of temples and monasteries had been restored. If that were not the case, could the Chinese authorities consider restoring their economic self-reliance? Religion or belief was a very significant component in the self-identification of minorities.

47. Mr. DE GOUTTES said, as a preliminary remark pending the Committee's subsequent discussion on the question of sources of information, that he saw no reason why the Committee, in dealing with so important an issue as racial discrimination, should adopt a more restrictive, timorous approach to the question of sources than, for instance, the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

48. The reports suggested that the Convention was well observed in China. They did not, however, reflect the difficulties and problems reported from many other sources, particularly non-governmental organizations. Bodies like CERD were often faced with a situation of that kind, in which there was an official version presented by the reporting State and another version reflecting a more critical view of the actual situation. As an independent expert, he requested the representatives of China to accept what was in fact the Committee's raison d'être, namely its function as an investigating body seeking and obtaining information from a variety of sources and comparing it with the information provided by the reporting country. He was sure that the representative of China would see the merits of cooperating in that kind of approach.

49. Regarding the application of articles 2, 4, 5, 6 and 7 of the Convention, the reports had rightly focused on the problem of minorities. Although it was asserted that the political and legal situation in China guaranteed equality, non-discrimination, regional autonomy, harmony, solidarity and mutual assistance, a number of questions, some of which had already been asked by other speakers, remained to be answered. In general terms, he wished to know what specific institutions enabled minorities to exercise their powers under the 1984 Law of the People's Republic of China on Regional National Autonomy, and what links existed between those institutions and the organization of the Communist Party. He also requested general statistics on changing trends in the number of people belonging to ethnic minorities in the various regions in terms of the Chinese population as a whole, and in particular the percentage of minorities in the civil service, trade, the magistrature and educational establishments.

50. Turning to more specific issues, he said that there was some evidence, obtained in particular from the Commission on Human Rights and non-governmental organizations, such as the International League for Human Rights and the Minority Rights Group, to suggest that there were certain forms of discrimination against, specifically, the Tibetan minority. In the light of the exchange of views that had just taken place in the Committee, he did not wish to enter into the question of the legal status of Tibet, but would focus on the implementation of the Convention, especially of the rights under article 5. There were reports that the rights of Tibetans to freedom of movement and residence and to leave and return to their country were restricted, and that not only did those restrictions not apply to the Chinese, but the latter were even given certain incentives to move to Tibet, which had resulted in a significant influx of Chinese into the region. He requested a clear reply, backed up by statistics, regarding changing trends in the number of Chinese resident in Tibet and the ratio of Chinese immigrants to the local population. He also sought information on reported acts of discrimination in regard to freedom of religion and expression in Tibet, where it was said that monks had been arrested and monasteries and Buddhist temples destroyed. In connection with economic, social and cultural rights, reports had been received about discrimination in employment and labour. It was reported that most jobs required a thorough knowledge of Chinese, and that the Chinese occupied most senior posts and received higher wages and bonuses and easier credit facilities. The Chinese were also said to have more modern, better equipped housing than the Tibetans, who were relegated to the poorer areas with inadequate sanitation and drinking-water supplies.

51. There were also reports of discrimination in education, with, in many cases, separate establishments for Chinese and Tibetan pupils and better teachers and equipment in Chinese schools. Medical care was another area of possible discrimination, with the separation of Chinese and Tibetans in hospitals. Despite assertions to the contrary, birth control measures, including sterilization and abortion, were said to be stringently applied to Tibetans, at a time when the Chinese were being encouraged to go and live in Tibet.

52. He was seeking precise, quantified information in reply to his questions. Should that require consultation with the Chinese authorities, it could be provided at a later date.

53. Mr. BANTON said that the fact that China had been at war from 1937 to 1949 and had been sealed off from foreign influences from 1949 to 1979, and that the universities had been closed during the decade of the Cultural Revolution made it easy to understand that the country should lag behind in understanding racial problems in the world and that the Government faced a formidable task in conveying such problems to the population. Although the reports spoke of the people of China, he believed that they reflected the views of the elite and the Government rather than those of the mass of the people. In China, racism was equated with white financial exploitation of people of colour, and the prevailing idea was that blacks should be protected and helped, not because they were equal but because they were biologically and culturally inferior. Paternalism was a common attitude. Blacks studying in China had often been the victims of paternalism and prejudice at best, and discrimination and even physical violence at worst. Most violence against blacks was never reported, partly because it was seldom witnessed by westerners, since blacks and whites were often separated and relations between them regarded with disfavour, but also because many African States did not wish to disclose it, since they benefited from Chinese aid and did not wish to antagonize the Chinese Government, and because western journalists who reported such violence could expect to be expelled from the country, as had happened in May 1986.

54. He drew attention to the reference in paragraph 17 of the fourth periodic report (CERD/C/179/Add.1) to the "peaceful liberation of Tibet", which might simply be a mistranslation of the original Chinese, but, if intended as a statement of historical fact, was grotesque. If the use of the phrase was deliberate it might imply a serious change in the Chinese position since the Committee had considered the second periodic report 3/ of China in 1986, when there had been grounds for optimism.

55. In dealing with the world-wide problem of excessive population growth, no State had a more decisive policy than China, although it was an exaggeration to refer to family planning as "voluntary". Such issues could only be appropriately considered by the Committee if they were regarded as racially or ethnically discriminatory. The Chinese Government had always claimed that family planning policies did not apply to the minority nationalities, and in the case of Tibet, with the serious decline in its population, a policy of relaxation must be particularly beneficial. However, there were recent indications that such policies were to be altered to encourage minorities to join the national family planning programme. The question that arose was how

such policies were implemented at the local level and how well they were supervised by the Government, since he understood that certain family planning teams received monetary incentives to perform abortions and sterilizations. An eye-witness account in his possession, by two monks in Amdo, claimed that a family planning team operating near their monastery had sterilized all women of childbearing age in the village and performed abortions on all pregnant women, including those who were nine months pregnant. The operations had been performed under threat or by force and those who had initially refused had been given no subsequent medical care. Such reports gave grounds for believing that the official policy was not being applied in a non-discriminatory fashion. An article in a journal published in 1989, China Population News, and written by Deng Bihai, and been brought to his attention. The language of the article, which concerned human reproduction, reflected outmoded concepts about the biological inferiority of minorities. If that journal had official status, there were grounds for believing that it constituted an infringement of article 4 (a) and (c) of the Convention.

56. Referring, like Mr. Ferrero Costa, to paragraph 72 of the fourth periodic report concerning the causes and perpetrators of the riots in Lhasa, he said that the language used was not the proper language in which to address a committee of experts. Many Committee members had experienced riots in their own countries and knew that they were highly complex phenomena. There were small groups of separatists in many countries, but the question was why such people received the support of substantial sectors of the population, as there was reason to believe was the case in the Autonomous Region of Tibet. The Committee was aware of the dispute over the history of the region and of what was perceived by the Tibetan people as cultural oppression, racial discrimination in official and social services and the depletion of their natural resources. From the Chinese Government's point of view, Tibet was dependent economically and socially on China, but the way in which the Government's policies were perceived by the local population was not reflected in the reports. With reference to Mrs. Sadiq Ali's statement, he said that the Beijing Government's "one country, two systems" approach to Tibet in 1951 had been abandoned by the end of that decade. The latest periodic reports were not encouraging, and it was to be hoped that some of the ideas put forward in 1951 might be revived in order to improve the situation.

57. Mr. VIDAS expressed appreciation of the cooperative attitude shown by China. With regard to paragraph 59 of the third periodic report (CERD/C/153/Add.2), he would like to know how many monasteries and places for religious activities were still closed and how many had been opened since December 1987 when the report in question had been submitted for consideration.

58. Mr. ABOUL-NASR said he wished to assure Mr. de Gouttes that he was not opposed to extending the sources of information available to the Committee.

59. Mr. FERRERO COSTA, speaking on a point of order, said he wished to stress the point that members should confine themselves to articles of the Convention.

60. Mr. LECHUGA HEVIA, referring to paragraph 13 of the third periodic report (CERD/C/153/Add.2), said he would like to know why Tibet was given preferential treatment with regard to the retention of foreign exchange income earned from foreign trade.

61. Mr. RESHETOV said that he endorsed the views expressed by Mr. de Gouttes concerning differences in the attitudes of States to the Convention. In reporting on certain provisions of the Convention, some States said that torture did not exist in their country while others indicated that they had no minority problem. China belonged to a different group of States. Since 1982 China, which had many problems, had adopted an approach involving a dialogue with the Committee.

62. In his opinion, members could use any source of information they wished and he recognized that non-governmental organizations frequently provided extremely valuable information. In the case of some European countries, the only information available came from official sources.

63. He stressed that the remarks made by members concerning the report of China were intended to be constructive and did not constitute criticism of that country.

64. Mr. ABOUL-NASR said he wished to make it clear that he was not opposed to non-governmental organizations as a source of information and thought that members should invite them to address the Committee.

65. Mr. FAN Guoxiang (China) said that his delegation would require some time to prepare replies to the questions raised by members. He stressed the readiness of his Government and delegation to conduct a serious dialogue with the Committee.

66. With regard to the status of Tibet, he said that it had always been part of the territory of the Republic of China.

67. The CHAIRMAN thanked the Chinese delegation for continuing its dialogue with the Committee.

Mr. Fan Guoxiang (China) withdrew.

Tenth periodic report of Czechoslovakia (CERD/C/172/Add.5)

At the invitation of the Chairman, Mr. Kralik (Czechoslovakia) took a place at the Committee table.

68. Mr. KRALIK (Czechoslovakia) said that since the submission in 1988 of the tenth periodic report (CERD/C/172/Add.5) of Czechoslovakia, much had changed in Central and Eastern Europe, including his country where efforts were being made to secure consistent implementation of the commitments assumed under the Convention. The changes were reflected in a new approach by his Government to international cooperation in the field of human rights and fundamental freedoms. It was, however, obvious that problems continued to exist with respect to protection against racism and racial discrimination. As in the case of all the newly democratic countries of Central and Eastern Europe, relations among members of various national and ethnic minorities were among the most pressing problems.

69. Referring to recent manifestations of racial intolerance involving gypsies or Vietnamese workers, he said that his Government, which was desirous of consistently meeting its commitments, pursued a policy aimed at the elimination of racial discrimination in all its forms. It regarded the rights of minorities as a specific part of fundamental human rights and was convinced that it would find common solutions making use of valid treaties and existing international mechanisms.

70. The fundamental social and political changes that had taken place since the submission of the tenth periodic report were also reflected in the rule of law and its application by State authorities. New laws in both national republics and at a federal level were under preparation and would be followed by an extensive recodification of Czechoslovak law. Work was under way on the drafting of, inter alia, a new code of civil court procedure, a code of penal procedure, and an act on the organization of courts.

71. On 2 May 1990, the Federal Assembly had adopted an amended penal code, which had not, however, substantially affected the provisions of the criminal law quoted in previous reports by his Government on the prohibition of racial discrimination. It was, however, noteworthy that it had rescinded a provision of section 3 of Act No. 74/1958 which related to the permanent settlement of nomadic persons and which had allowed such persons to be prosecuted. Moreover, the amended criminal law also provided for prosecution of crimes against humanity, especially those related to genocide. A number of other offences against groups of individuals were dealt with seriously in the amended criminal law.

72. The Czechoslovak code of penal procedure continued to guarantee equality before the law to citizens involved in court proceedings, the right to use their mother tongue during such proceedings, etc. Protection against racial discrimination in all its forms had been enhanced in the amended regulations concerning the right of association, the right of assembly, and the right to submit petitions.

73. With regard to paragraph 22 of the report, at the present time, 46,100 foreign workers were employed in his country under conditions stipulated in intergovernmental agreements concluded with the respective States. The largest group consisted of workers from Viet Nam (34,700 persons).

74. As a result of the fundamental structural changes in the national economy and the transition to a market economy, his Government had decided to terminate, in accordance with the relevant provisions, intergovernmental agreements concluded with individual foreign partners on the employment and training of their nationals in Czechoslovak organizations. All foreign workers (except Polish and Hungarian citizens working in border areas) would return to their respective countries in stages, the process to be completed by 1995.

75. With respect to the statement in paragraph 27 of the report, he said that in some areas of the Republic, certain isolated manifestations of racially motivated intolerance had occurred, in particular clashes between gypsies and foreign workers, on the one hand, and members of the so-called "skinhead" movement, on the other. Since those events had occurred relatively recently,

penal proceedings against the offenders were still in the preparatory stage. Nevertheless, his country's highest State authorities and a number of civic movements had unequivocally and publically condemned them. Measures had been taken to strengthen police patrols in the affected areas. In addition, individuals and groups of persons suspected of having taken an active part in the events were receiving increased attention from the security bodies.

76. Greater attention was being paid to the legal awareness of his country's inhabitants. Legal education had been intentionally distorted in the past, in particular with regard to the "legal privileges" of individuals or groups. The legal and theoretical basis of human rights in his country must therefore be unambiguous in the future. The granting of civil rights without corresponding civil and human duties could lead to anarchy and destruction.

77. Some parts of the tenth periodic report related to concepts and terminology prevailing under the previous regime in his country. He was referring mainly to paragraph 1, where the term "socialist democracy" was used to portray his country's legal order, and paragraph 18 concerning the question of unemployment; the statement made in the latter paragraph was no longer valid in view of his country's transition to a market economy.

78. In conclusion, he assured members that the new Government was striving to implement a policy of openness in regard to questions of racism and racial discrimination with a view to their complete elimination. Those questions continued to be topical throughout the world and his country therefore valued the role played in that area by the United Nations and the relevant international legal instruments. It recognized the importance of international cooperation within existing verification mechanisms. With a view to securing consistent compliance with all commitments assumed under the Convention, consideration was currently being given in Czechoslovakia to issuing a declaration in accordance with article 14 of the Convention whereby it would recognize the Committee's jurisdiction in dealing with complaints by individuals of violations of any of the rights proclaimed in the Convention. To judge by the responses from the respective authorities, he believed that that would be done in the near future.

Mr. Kralik (Czechoslovakia) withdrew.

The meeting rose at 6.05 p.m.

Notes

1/ E/CN.4/1990/NGO/9.

2/ Ibid.

3/ CERD/C/126/Add.1

870th meeting

Friday, 10 August 1990
at 10.10 a.m.

Chairman: Mr. SHAHI

AGENDA ITEM 7

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Tenth periodic report of Czechoslovakia (CERD/C/172/Add.5) (continued)

At the invitation of the Chairman, Mr. Kralik, Mr. Plank, Mr. Visek and Mr. Pagac (Czechoslovakia) took seats at the Committee table.

1. Mr. RHENAN SEGURA thanked the representatives of Czechoslovakia for their introduction and the willingness to cooperate which they had displayed. He welcomed the very positive changes that had taken place in the country since the tenth periodic report (CERD/C/172/Add.5) had been drafted. In view of the important transition period the country was currently going through, he would ask the representatives of Czechoslovakia a number of general questions. He would welcome information on the law relating to the status of nationalities, which represented a significant step forward with regard to the rights of nationalities, particularly the right to education in one's mother tongue, the right to cultural development, the right of association and the right of access to information media in one's mother tongue. Besides the Czechs and the Slovaks, there were other nationalities in Czechoslovakia, and he would like to know whether they constituted a population that was increasing or decreasing. The gypsies, who were defined as an ethnic group and not as a nationality, were, according to the information provided in the report, steadily increasing in number. Was that group represented in the Czechoslovak Parliament and was the use of its language fully respected? With reference to article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination, he would like to know what criteria were used to decide whether an individual belonged to the gypsy ethnic group.

2. Large numbers of third-world workers (some 40,000) were living on Czechoslovak territory and were subjected to discriminatory practices and acts of violence by groups of "skinheads". Provision had been made for those workers to remain in Czechoslovakia for another five years, and he would like to know what measures the Government intended to take in order to ensure their safety.

3. Mr. ABOUL-NASR welcomed the changes in Czechoslovakia and the interest displayed by the new Government in the cause of human rights in general and civil and political rights in particular. Czechoslovakia's next report would undoubtedly provide a wealth of information, given the legal changes currently in course of preparation. He referred to paragraph 13 of the report (CERD/C/172/Add.5), which said that gypsy citizens were not regarded as a nationality but as an ethnic group, and that as such they were not treated as an entity in the regulations relating to the right of nationalities. He would like to know whether those persons nevertheless enjoyed the same rights and had the same obligations as other citizens, such as for example the obligation

to do military service. He was also concerned about paragraphs 15 and 16 of the report, which said that gypsy children were less successful at school and even had a higher percentage of mentally retarded than the rest of the population; those children sometimes had to be placed in special schools or social welfare institutions. Referring in particular to the English version of the report, he said he was shocked by the wording of paragraphs 15 and 16 and would like them to be clarified. In paragraph 18, it was stated that there was no unemployment in Czechoslovakia; he would like to know if that was also true for the gypsy community. The Government's aim of integrating the gypsies, as expressed in paragraph 19 of the report, must not frustrate the wishes and aspirations of the persons concerned. It was important that the identity of the gypsies should be preserved. In conclusion, he wished the new Czechoslovak Government every success.

4. Mr. FOIGHEL associated himself with the questions asked by Mr. Segura. He would also like to know whether there was any link between the attacks by groups of "skinheads" on foreign workers living in Czechoslovakia and the exercise of freedom of association, which had been permitted very recently in Czechoslovakia. Was that really a new situation for the country? What measures did the Government intend to take to protect nationals of minority groups?

5. Mr. WOLFRUM associated himself with Mr. Foighel's comments. He too wished to ask a number of questions about the gypsies living in Czechoslovakia. Were they Roms or Sintis? Did they use their mother tongue and were they educated in that language? Was the law which prohibited them from working together still in force? The gypsies were essentially migrants. Did they have the right to leave the territory of Czechoslovakia and could they travel freely within the country itself? How was the Government dealing with the problems involved in teaching children in a nomadic population? He would be grateful if the representative of Czechoslovakia would kindly answer those questions.

6. Mr. de GOUTTES said that he too welcomed the tremendous progress that had been achieved in Czechoslovakia in protecting human rights. He also was pleased with the decision announced by Czechoslovakia to sign the declaration on communications from individuals provided for in article 14 of the Convention.

7. In the next country report, the statistics given in paragraph 3 of the tenth periodic report (CERD/C/172/Add.5) should be updated and take account of the size of the gypsy population. He would also like to know whether the country's minorities were represented in the electoral processes. According to paragraph 18, there was no unemployment in Czechoslovakia. Was that information still accurate and did it also apply to the ethnic group of the gypsies? Regarding the incidents that had occurred between Vietnamese workers and "skinheads", he would like the representative of Czechoslovakia to explain to the Committee why the Vietnamese had come to Czechoslovakia in the first place. Had agreements been signed with Viet Nam to that effect? If so, were those agreements still in force and was there any intention to amend them? Were there similar agreements governing the entry of other foreign workers into Czechoslovak territory? What measures did the Government intend to adopt to ensure the safety of Vietnamese nationals?

8. Mr. VIDAS also welcomed the favourable change in the situation in Czechoslovakia. Referring to paragaraph 13 of the tenth periodic report (CERD/C/172/Add.5) and taking up the point raised by Mr. Aboul-Nasr, he asked why gypsy citizens were not considered as a nationality but as an ethnic group and why, as such, they were not treated as an entity. It was stated in paragraph 14 of the report that the share of gypsy citizens in the population varied considerably from district to district and could reach up to 17 per cent in some districts. Were any particular difficulties being encountered in those regions with regard to racial discrimination? If so, what solutions had the authorities envisaged?

9. Mr. YUTZIS said that the latest information on the political situation in Czechoslovakia was very promising. It was therefore against that background that the situation regarding racial discrimination must be assessed. He, too, wished to comment on the situation of the gypsies in Czechoslovakia. Paragraph 15 of the tenth periodic report (CERD/C/172/Add.5) said that gypsy children were less successful at school, and that the reasons included poorer command of the language of instruction and insufficient encouragement and assistance on the part of the family. Paragraph 16 of the same report said that, in comparison with the rest of the population, gypsies had a higher percentage of retarded children and that that situation was due to certain "negative socio-pathological phenomena within the gypsy population". While he did not wish to ignore the fact that specific problems could arise within a particular social group, he regretted the use of the term "socio-pathological" and pointed out that the social problems observed in one sector or another of a country could reflect a more widespread social malaise. That exemplified the temptation characteristic of any human society to find a scapegoat on which to release its tensions. The leaders of Czechoslovakia, and in particular the persons responsible for social affairs within the Government, should examine the present contradictions more carefully. He hoped that those comments would be taken up when the next report of Czechoslovakia was submitted.

10. Mr. RESHETOV said that he welcomed the process of democratization which was beginning in Czechoslovakia and hoped that the changes taking place would not bring in their train any ideological or political extremism which might jeopardize the exercise of the fundamental rights and freedoms of certain groups. He fully endorsed Mr. Foighel's comments and asked what attitude had been taken by the Czechoslovak press in reporting the clashes which had occurred, particularly with Vietnamese workers.

11. Mr. FERRERO COSTA noted that, according to paragraph 2 of the tenth periodic report (CERD/C/172/Add.5) of Czechoslovakia, the citizens of that country could not directly invoke the provisions of the Convention before the courts or administrative authorities, because the obligations entered into by Czechoslovakia under the Convention were "put into practice through internal regulations". He asked whether that situation still obtained.

12. He would like to know the thrust of the new legislation relating to article 4 of the Convention and whether it repeated the provisions of the old Penal Code, which had been very interesting. Concerning article 6, he inquired what measures the State party had taken to provide protection and effective legal remedies for persons subject to its jurisdiction.

13. He hoped that the next periodic report of Czechoslovakia would provide more detailed information on the minorities, especially the Hungarians and the gypsies, and how article 5 was applied to them.

14. The CHAIRMAN proposed that the Committee should move on directly to consideration of the periodic reports of Korea in order to give the representatives of Czechoslovakia time to prepare their replies. Mr. Kralik would take the floor at the end of the meeting.

It was so decided.

Mr. Kralik, Mr. Plank, Mr. Visek and Mr. Pagac (Czechoslovakia) withdrew.

The meeting was suspended at 11.05 a.m. and resumed at 11.25 a.m.

AGENDA ITEM 2

Solemn declaration by the newly elected members of the Committee under rule 14 of the rules of procedure (concluded*)

At the invitation of the Chairman, Mr. AHMADU made the solemn declaration provided for under rule 14 of the Committee's rules of procedure

AGENDA ITEM 7

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Fifth and sixth periodic reports of the Republic of Korea (CERD/C/167/Add.1 and CERD/C/192/Add.1)

At the invitation of the Chairman, Mr. Lee and Mr. Kim (Republic of Korea) took places at the Committee table.

15. Mr. LEE (Republic of Korea) said that the fifth and sixth periodic reports (CERD/C/167/Add.1 and CERD/C/192/Add.1) of his country mainly outlined developments since submission of the fourth periodic report. 1/

16. In the first part of those reports, the Government emphasized the homogeneous nature of the Korean population, explained its position on apartheid and provided information on the status of aliens in Korea. No complaint of racial discrimination had been referred to the courts or the administrative authorities.

17. The second part outlined the measures taken by the Government to implement articles 2-7 of the Convention. Regarding article 2, he pointed out that, in April 1990, the Republic of Korea had acceded to the International

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* Resumed from the 864th meeting.

Covenant on Economic, Social and Cultural Rights, and to the International Covenant on Civil and Political Rights and the Optional Protocol thereto.

18. Concerning article 3, both reports testified to the Covernment's full commitment to its anti-apartheid policy. In connection with article 4, the Constitution and domestic legislation were considered sufficient to ensure that the article was fully complied with. Answers were also given to the questions asked during consideration of the fourth periodic report concerning articles 5-7 of the Convention. 2/

19. In conclusion, he stated that his country intended to continue cooperating fully with the international community with a view to the abolition of all forms of racial discrimination.

20. The CHAIRMAN invited Mrs. Sadiq Ali, the specially appointed rapporteur, to take the floor.

21. Mrs. SADIQ ALI said that, like the previous reports, the fifth and sixth periodic reports submitted by the Republic of Korea (CERD/C/167/Add.1 and CERD/C/192/Add.1) showed that that State was fully resolved to cooperate actively with the Committee. Far-reaching political changes had taken place in the country since 1988, contributing to greater democracy and a liberalization of the régime. It would be helpful if the text of the new Constitution could be made available to the Committee, especially the provisions concerning human rights, and if it could be told exactly how the role of the army had changed.

22. Regarding the position of foreigners in the Republic of Korea, she observed that no figures had been supplied on Indo-Chinese refugees; more information on the subject would be welcome. She asked whether the Republic of Korea was simply a country of first asylum or whether the refugees could settle there and take Korean nationality. There were great disparities in the foreign population, and information on the measures taken to promote their integration would be helpful. In particular, how many schools had been established for the Chinese community, which was the largest group? Were its language and culture being preserved?

23. Many Koreans believed that Cholla province in the south-west of the country was being neglected and that its population had for a long time been subjected to discrimination. If that was true, what action was planned to remedy the situation.

24. In passing, she asked what was the legal status of the United States troops stationed in the Republic of Korea; their presence aroused deep animosity and strong reactions on the part of students. She also asked whether their withdrawal was envisaged.

25. The Republic of Korea was to be congratulated on the measures it had taken against South Africa, in accordance with article 3 of the Convention. With reference to article 4, paragraph 20 of the fifth periodic report (CERD/C/167/Add.1) read: "Necessity for initiating additional domestic legislation to implement the Convention has not been compelling ... However,

due attention will continue to be given to find better ways to reflect more effectively the spirit of the convention in our domestic legal system".

26. Again in that connection, the sixth periodic report (CERD/C/192/Add.1) cited article 11 of the Constitution. The Government stated: "The said article itself can be invoked before the Courts and can be directly enforced by them" (ibid., para. 27), and "These constitutional principles are reflected in a concrete and detailed way in various domestic laws" (ibid., para. 28). It would be very useful if the Committee could have the text of those laws and be informed of any amendment in the Criminal Code affecting the implementation of article 4. The measures taken were, however, inadequate and it was to be hoped that the Government would, as it was required to do, adopt specific texts in order to give effect to the provisions of the Convention, if only to enable it to deal with any contingency.

27. With respect to article 5 (e) (ii) of the Convention, it would seem that many employers were strongly anti-trade union. Companies apparently hired strongmen to beat up and even abduct trade union leaders and intimidate workers. She asked what the Government was doing to put an end to that situation. With regard to article 5 (d) (viii), the Government was reportedly being more lenient in enforcing the laws restricting the expression of ideas considered to be communist and had announced its intention to amend such laws. It would be helpful to know what the exact situation was.

28. Had any new laws been enacted concerning the press, was academic freedom still restricted and had the provisions relating to assemblies or demonstrations been relaxed or would they be relaxed? It would also be helpful to know what action had been taken to increase local autonomy and to tackle the serious social problems, and whether the Government still authorized employment of children over 12 in specific jobs.

29. With regard to article 6, it was very encouraging to see that the Convention had become a part of the domestic law of the Republic of Korea and could be invoked directly before the courts. Articles 12, 26, 27, 28 and 29 of the Constitution, mentioned in paragraph 35 of the sixth periodic report, should be made available to the Committee, together with the relevant texts of the other fundamental laws, mentioned in paragraph 36 of the same report, which could be invoked in cases of racial discrimination (Civil Code, Criminal Code, Code of Civil Procedure, etc.)

30. Concerning article 7, more information was needed on measures taken in the area of education to combat prejudice leading to racial discrimination and to promote understanding, tolerance and friendship among nations. In that connection, were there any special courses for magistrates, teachers and police personnel?

31. The Republic of Korea had not yet stated whether it intended to make a declaration under article 14 of the Convention, recognizing the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction.

32. Mr. ABOUL-NASR noted from paragraph 20 of the fifth periodic report (CERD/C/167/Add.1) that the Government of the Republic of Korea was aware of the need to implement article 4 of the Convention more effectively. In that connection, he inquired whether the acts listed in article 4 of the Convention had been declared punishable under the law, particularly the Criminal Code.

33. He pointed out that article 11 of the Constitution, which was quoted in paragraph 26 of the sixth periodic report (CERD/C/192/Add.1), made no mention of civil rights or racial discrimination.

34. Mr. de GOUTTES noted that according to paragraph 11 of the sixth periodic report (CERD/C/192/Add.1), the Convention could be invoked before the courts. He wondered whether the "homogeneity of the Korean people" (ibid., para. 12) was a satisfactory explanation of why no complaint of racial discrimination had been brought before the courts. Could it be that the almost 50,000 foreigners (ibid., para. 16) living in the Republic of Korea were therefore not subject to any discrimination, or were they ill-informed about their rights or did they face obstacles in bringing their cases before the courts?

35. Mr. GARVALOV said he would welcome information on the status of foreigners living in the Republic of Korea and on the legal guarantees protecting them from discrimination, and whether the minimum wage applied to foreigners. He would also like to know whether the Government made any distinction between "aliens" and "foreigners" (see English version of the sixth periodic report (CERD/C/192/Add.1, paras. 17 and 18)).

36. He asked whether the fact that the Convention could be invoked before the courts was in practice sufficient to prevent acts of discrimination and whether it would not be necessary to adopt further legislative measures to prevent and punish such acts.

37. Mr. YUTZIS asked why it was that, between March 1988 and July 1990, the proportion of Chinese in the total population had declined, whereas the proportion of United States and Japanese citizens had increased. Was the right to work recognized in the Republic of Korea and who, especially among the minorities, received the minimum wage?

38. In his opinion, the assertion that there was no racial discrimination because no complaint had been brought before the courts and that the Korean population was homogeneous was not really convincing.

39. The CHAIRMAN congratulated the Republic of Korea on having acceded to the International Covenant on Civil and Political Rights and to the Optional Protocol thereto. That action raised hopes that the country would soon make the declaration provided for in article 14 (1) of the Convention. What sanctions were imposed by the courts when article 11 of the Constitution was infringed.

40. In response to their request, he would now give the representatives of the Republic of Korea time to consider the questions they had recently been asked.

Mr. Lee and Mr. Kim (Republic of Korea) withdrew.

Tenth periodic report of Czechoslovakia (CERD/C/172/Add.5) (concluded)

At the invitation of the Chairman, Mr. Kralik, Mr. Plank, Mr. Visek and Mr. Pagac (Czechoslovakia) took places at the Committee table.

41. Mr. PLANK (Czechoslovakia), replying to the questions asked by the members of the Committee on his country's tenth periodic report (CERD/C/172/Add.5), said that in the course of the transition towards a parliamentary democratic system commissions in the minorities were represented had been set up to draft the new Constitution for the Federal State and for the two republics which made up that State. In addition, a number of new laws and a code of the rights and duties of citizens would be drafted, and the Penal, Civil and Commercial Codes would be amended. He read out a number of articles contained in the draft constitution prepared by the Civic Forum. Draft article 3 provided that every citizen could exercise all the rights and freedoms proclaimed in the Constitution, without any distinction whatsoever, such as nationality, race, religious faith, political opinion or wealth, and that all citizens were equal before the law. Draft article 4 set forth the rights enjoyed by gypsy, Ukrainian, Hungarian and German citizens: the right to information in their mother tongue, cultural development, the use of their language in the administration, the right to join national organizations, and the right to freedom of the press and information in their own language.

42. Czechoslovakia currently had a population of 15.5 million, of which 500,000 were Hungarians, 73,000 oles, 48,000 Ukrainians and 399,000 gypsies. Those minorities had participated in the first democratic elections held in June 1990 and had nominated candidates within the framework of their own political parties and other parties.

43. The Hungarian community was the best represented because 5 of its members had been elected to the Chamber of the People, 10 to the Chamber of Nationalities and 24 to the National Slovak Council. The gypsies had three representatives in each of the Houses of Parliament.

44. Regarding the cultural life of those minorities, he said that the German community published three newspapers, the gypsy community one periodical and the Polish community five perioidicals. The Hungarian minority published 19 periodicals and in 1989 its non-periodical publications had numbered 223.

45. In the Czech Republic alone, for young people of Polish origin there were 48 classes comprising which 1,060 pupils; there were 28 Polish primary schools in all and 5 training centres. In Slovakia, the Hungarian community had 245 primary schools, 18 high schools, 20 training centres and 28 other vocational training centres. Also in Slovakia, the Ukrainian community had 89 schools, 1 high school and 18 training centres. The gypsies had no school because there was no official written gypsy language and no teachers. A chair had therefore been created at the Nitra Teachers' Training College to train

gypsy teachers. The new Government was thus sparing no effort to ensure that the gypsies could exercise their cultural rights. President Havel had undertaken to ensure that they could in fact enjoy all the rights provided for in the international conventions. The primacy of international law over internal law would be written into the future Czechoslovak Federal Constitution and the constitutions of the two federal republics.

46. Regarding freedom of movement, article 109 of the Penal Code restricting travel abroad had been repealed and Czechoslovak citizens could travel to the countries of their choice whenever they wished. Emigration for political reasons, which had occurred on a massive scale after the events of 1948 and 1968, had losts its purpose and many former emigrants were now returning to the country, bringing with them know-how which could be very valuable in building a market-economy society. The problem of internal migration hardly arose, because the unemployment rate remained minimal. Nevertheless, there could be an increase in unemployment as a result of the economic restructuring that was taking place and preventive measures had been taken to offset its consequences.

47. It was true that there had been clashes between gypsies and "skinheads" those delinquents were a recent phenomenon, and the Czechoslovak authorities had taken all necessary measures to prevent a recurrence of such incidents. "Skinheads" had been charged and the culprits would be punished according to the law.

48. The Cuban (15,000 in number) and Vietnamese (34,000) immigrant workers had come to Czechoslovakia for vocational training under bilateral agreements with their respective Governments. They were employed under the same conditions as national workers.

49. The Czechoslovak Penal Code (in particular, arts. 196, 198 and 359) provided for effective penalties, such as prison sentences, for the offence of discrimination. All citizens were equal before the law and were entitled to express themselves in their mother tongue before the courts.

50. Mr. VISEK (Czechoslovakia) said that in his country there were some 400,000 gypsies, the vast majority of whom belonged to the Rom ethnic group. Their language was of Indo-European origin and had not yet been put in written form. The Government was encouraging a renaissance of gypsy culture. A Czech-Rom dictionary and an anthology of gypsy poetry were being prepared. He would submit to the Committee a publication intended for gypsies.

51. The answer to the question "Who is a gypsy in Czechoslovakia?" was simple: a gypsy was anyone who considered himself to be one. The 1991 census would undoubtedly provide several interesting insights on the subject.

52. Two thirds of the gypsy population lived in the Slovak Republic, particularly in the eastern part. Wherever traditional relations had been maintained with the non-gypsy population, there were few clashes. However, more clashes occurred in the west, where some gypsies had moved. Rather than integrate the gypsy population, the authorities were endeavouring to foster the peaceful coexistence of the various communities, with due respect for the cultural identity of each.